TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

No. ~~269.~~ 75

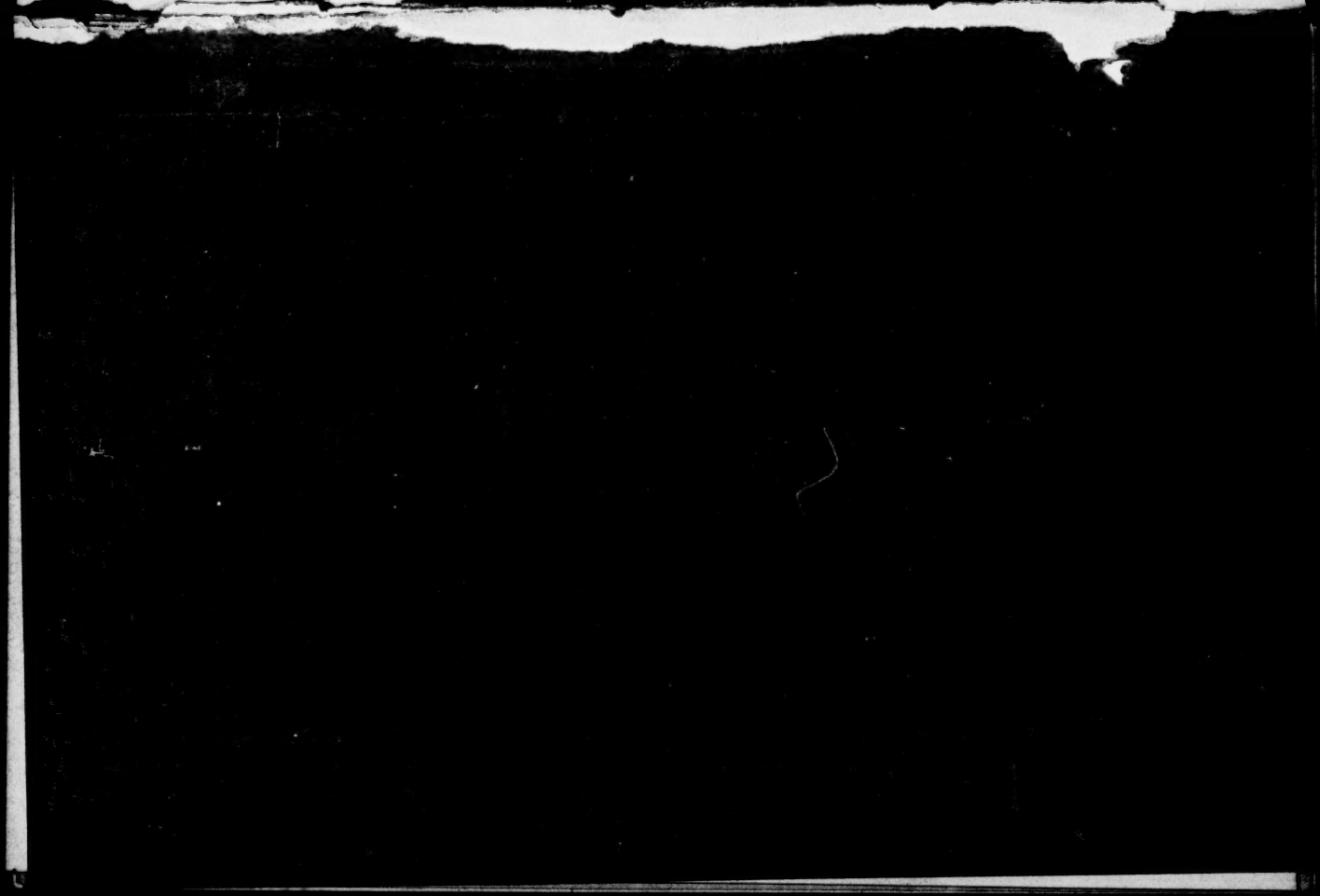
JOHN G. TAMELING, PLAINTIFF IN ERROR,

vs.

THE UNITED STATES FREEHOLD AND EMIGRATION COMPANY.

IN ERROR TO THE SUPREME COURT OF THE TERRITORY OF COLORADO.

FILED SEPTEMBER 28, 1874.



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1 In the supreme court of the Territory of Colorado.

Pleas before the honorable the judges of the supreme court of the Territory of Colorado, at the city of Denver, in the county of Arapahoe, at the February term of said court, held in said city on the second Tuesday of February, A. D. one thousand eight hundred and seventy-four.

Witness the honorable Moses Hallett, chief-justice of said court.

JOHN W. WEBSTER, *Clerk.*

2 JOHN G. TAMELING, PLAINTIFF IN error, *vs.* THE UNITED STATES FREEHOLD LAND AND Emigration Company, defendant in error. } Error to supreme court, Colorado Territory.

3 Be it remembered that heretofore, to wit, on the twelfth day of March, A. D. 1874, there was filed in the clerk's office of the supreme court of the Territory of Colorado a transcipt of the record and proceedings in this cause by the district court of the third judicial district of the Territory of Colorado, within and for the county of Pueblo; which said transcript is in the words and figures following, to wit:

4 TERRITORY OF COLORADO,
County of Pueblo, ss:

Pleas before the honorable Moses Hallett, chief-justice of Colorado Territory, and judge of the district court of the third judicial district of said Territory, at a term of said court within and for the county of Pueblo, begun and held at the court-house in the city of Pueblo, in said county, on Monday the twenty-seventh day of October, in the year of our Lord one thousand eight hundred and seventy-three. Present, Hon. Moses Hallett, judge of the district court of the third judicial district of Colorado Territory; J. W. Henry, esqr., district attorney of said district; Geo. A. Bute, clerk of said court; Abe R. Ellis, sheriff of Pueblo County.

Be it remembered that heretofore, to wit, on the twenty-fourth day of October, in the year of our Lord one thousand eight hundred and seventy-three, the clerk of said court received from the clerk of the district court of the third judicial district of Colorado Territory, within and for the county of Costilla, a certain transcript, with certain papers attached thereto; which said transcript and papers are in words and figures following, to wit:

Pleas in the district court of the third judicial district of Colo-
5 rado Territory, within and for the county of Costilla, at the July term thereof, A. D. 1873.

Present, Moses Hallett, chief-justice and judge, presiding; George A. Bute, clerk, by William H. Meyer, deputy; Filipe Chavez, sheriff.

Be it remembered that on the seventh day of July, A. D. one thousand eight hundred and *twenty*-three, the same being one of the days of said July term, A. D. 1873, of said court, the following proceedings were had and entered of record:

THE UNITED STATES FREEHOLD LAND AND Emigration Company *vs.* JOHN G. TAMELING.

On this day the said plaintiff, by H. C. Thatcher, its attorney, comes,

and the said defendant, by J. W. Henry, his attorney, also comes, and the said parties having filed in this cause their stipulation and agreement for a change of venue in this cause, it is ordered by the court that the venue in this cause be changed to the county of Pueblo, in the third judicial district, and that this cause be transmitted to the district court of the third judicial district of Colorado Territory, within and for the county of Pueblo, for further proceedings according to law.

TERRITORY OF COLORADO,
Costilla County, ss:

6 I, Geo. A. Bute, clerk of the district court of the third judicial district of Colorado Territory, do hereby certify that the above and foregoing is a true, full, and complete transcript of the record and proceedings in a cause lately pending in said court between the United States Freehold Land and Emigration Company and John G. Tameling, as the same appears of record in my office. And I further certify that hereunto attached, marked "A," are all the original papers filed in said cause in said court.

In witness whereof I have hereunto set my hand and the seal of said court at San Luis, in said Costilla County, this 13th day of October, A. D. 1873.

GEORGE A. BUTE, *Clerk*,
By WM. H. MEYER, *Deputy.*

TERRITORY OF COLORADO,
County of Costilla, ss:

In the district court of the third judicial district in and for the county of Costilla, in the Territory of Colorado, of the July term, A. D. 1873.

THE UNITED STATES FREEHOLD LAND AND Emigration Company *vs.* JOHN G. TAMELING. } Ejectment.

Stipulation.

It is stipuated and agreed by and between the parties to the above-entitled suit that the venue in said cause may be changed from the
7 district court for the county of Costilla to the district court for the county of Pueblo, in said Territory, there to be tried by the court, without the intervention of the jury, upon an agreed state of facts.

H. C. THATCHER,
Atty. for Plaintiff.
J. W. HENRY,
Atty. for Defendant.

(Endorsed as follows, to wit:) Filed this 7th day of July, A. D. 1873. Geo. A. Bute, clerk, by Wm. H. Meyer, deputy.

A.

TERRITORY OF COLORADO,
County of Costilla, ss:

In the district court of the third judicial district in and for the county of Costilla and Territory aforesaid, of the July term, A. D. 1873.

The United States Freehold Land and Emigration Company, a corpo-

ration organized and existing under and by virtue of an act of Congress of the United States, the plaintiff in this suit, by Henry C. Thatcher, its attorney, complains of John Gerard Tameling, the defendant, of a plea, wherefore he, the defendant, with force and arms, etc., entered into the following-described premises; for that, heretofore, to wit, on the first day of July, A. D. 1872, the plaintiff was possessed of certain premises situated in the county of Costilla, in the Territory of Colorado, and bounded and described as follows, to wit: "Beginning at a cedar stake set on the south bank of the southern branch of the Cuelebra River, on the eastern line of what is known as the Henry Blackmore ranch;
8 thence running due south seventy chains to a mound with a stake in the centre; thence east twenty chains to a mound with a stake in the centre; thence north one hundred chains to the south bank of the southern branch of Culebra River to a cedar stake; thence along said south bank of the southern branch of the Culebra River to the place of beginning; containing one hundred and sixty acres; and being so possessed thereof, the defendant afterwards, to wit, on the first day of May, A. D. 1873, entered into such premises; and that he unlawfully withholds from the plaintiff the possession thereof, and the plaintiff avers that it claims title to said premises, in fee, wherefore the plaintiff says he is injured and has sustained damages to a large amount, to wit, one thousand dollars, and therefore he brings suit, &c.

United States Freehold Land and Emigration Company,
By H. C. THATCHER,
Its Attorney.

(Endorsed as follows, to wit:) Filed this 7th day of July, A. D. 1873. Geo. A. Bute, clerk, by Wm. H. Meyer, deputy.

A.

TERRITORY OF COLORADO,
County of Costilla, ss:

In the district court of the third judicial district of Colorado, in and for the county of Costilla, of the July term, A. D. 1873.

JOHN GERARD TAMELING
ats.
9 THE UNITED STATES FREEHOLD LAND and Emigration Company. } In ejectment.

And the defendant, by John W. Henry, his attorney, comes and defends the wrong and injury, when, &c., and says that he is not guilty of unlawfully withholding the said premises claimed by the plaintiff, in manner and form as alleged in said declaration, and of this he puts himself upon the country.

J. W. HENRY,
Atty. for Deft.

And the plaintiff doth the like.

By H. C. THATCHER,
Atty. for Plaintiff.

(Endorsed as follows, to wit:) Filed this 7th day of July, A. D. 1873 Geo. A. Bute, clerk, by Wm. H. Meyer, deputy.

and the said defendant, by J. W. Henry, his attorney, also comes, and the said parties having filed in this cause their stipulation and agreement for a change of venue in this cause, it is ordered by the court that the venue in this cause be changed to the county of Pueblo, in the third judicial district, and that this cause be transmitted to the district court of the third judicial district of Colorado Territory, within and for the county of Pueblo, for further proceedings according to law.

TERRITORY OF COLORADO,
Costilla County, ss:

6 I, Geo. A. Bute, clerk of the district court of the third judicial district of Colorado Territory, do hereby certify that the above and foregoing is a true, full, and complete transcript of the record and proceedings in a cause lately pending in said court between the United States Freehold Land and Emigration Company and John G. Tameling, as the same appears of record in my office. And I further certify that hereunto attached, marked "A," are all the original papers filed in said cause in said court.

In witness whereof I have hereunto set my hand and the seal of said court at San Luis, in said Costilla County, this 13th day of October, A. D. 1873.

GEORGE A. BUTE, *Clerk*,
By WM. H. MEYER, *Deputy*.

TERRITORY OF COLORADO,
County of Costilla, ss:

In the district court of the third judicial district in and for the county of Costilla, in the Territory of Colorado, of the July term, A. D. 1873.

THE UNITED STATES FREEHOLD LAND AND Emigration Company *vs.* JOHN G. TAMELING. } Ejectment.

Stipulation.

It is stipulated and agreed by and between the parties to the above-entitled suit that the venue in said cause may be changed from the
7 district court for the county of Costilla to the district court for the county of Pueblo, in said Territory, there to be tried by the court, without the intervention of the jury, upon an agreed state of facts.

H. C. THATCHER,
Atty. for Plaintiff.
J. W. HENRY,
Atty. for Defendant.

(Endorsed as follows, to wit:) Filed this 7th day of July, A. D. 1873. Geo. A. Bute, clerk, by Wm. H. Meyer, deputy.

A.

TERRITORY OF COLORADO,
County of Costilla, ss:

In the district court of the third judicial district in and for the county of Costilla and Territory aforesaid, of the July term, A. D. 1873.

The United States Freehold Land and Emigration Company, a corpo-

ration organized and existing under and by virtue of an act of Congress of the United States, the plaintiff in this suit, by Henry C. Thatcher, its attorney, complains of John Gerard Tameling, the defendant, of a plea, wherefore he, the defendant, with force and arms, etc., entered into the following-described premises; for that, heretofore, to wit, on the first day of July, A. D. 1872, the plaintiff was possessed of certain premises situated in the county of Costilla, in the Territory of Colorado, and bounded and described as follows, to wit: "Beginning at a cedar stake set on the south bank of the southern branch of the Cuelebra River, on the eastern line of what is known as the Henry Blackmore ranch;
8 thence running due south seventy chains to a mound with a stake in the centre; thence east twenty chains to a mound with a stake in the centre; thence north one hundred chains to the south bank of the southern branch of Culebra River to a cedar stake; thence along said south bank of the southern branch of the Culebra River to the place of beginning; containing one hundred and sixty acres; and being so possessed thereof, the defendant afterwards, to wit, on the first day of May, A. D. 1873, entered into such premises; and that he unlawfully withholds from the plaintiff the possession thereof, and the plaintiff avers that it claims title to said premises, in fee, wherefore the plaintiff says he is injured and has sustained damages to a large amount, to wit, one thousand dollars, and therefore he brings suit, &c.

United States Freehold Land and Emigration Company,
By H. C. THATCHER,
Its Attorney.

(Endorsed as follows, to wit:) Filed this 7th day of July, A. D. 1873. Geo. A. Bute, clerk, by Wm. H. Meyer, deputy.

A.

TERRITORY OF COLORADO,
County of Costilla, ss:

In the district court of the third judicial district of Colorado, in and for the county of Costilla, of the July term, A. D. 1873.

JOHN GERARD TAMELING
ats.
9 THE UNITED STATES FREEHOLD LAND and Emigration Company. } In ejectment.

And the defendant, by John W. Henry, his attorney, comes and defends the wrong and injury, when, &c., and says that he is not guilty of unlawfully withholding the said premises claimed by the plaintiff, in manner and form as alleged in said declaration, and of this he puts himself upon the country.

J. W. HENRY,
Atty. for Deft.

And the plaintiff doth the like.

By H. C. THATCHER,
Atty. for Plaintiff.

(Endorsed as follows, to wit:) Filed this 7th day of July, A. D. 1873 Geo. A. Bute, clerk, by Wm. H. Meyer, deputy.

A.

And thereupon, to wit, on the first day of November, in the year of our Lord one thousand eight hundred and seventy-three, the said plaintiff, by H. C. Thatcher, its attorney, and the said defendant, by J. W. Henry, his attorney, filed in the office of the clerk of the district court of the third judicial district of Colorado Territory, within and for the county of Pueblo, certain stipulations and statement of facts; which said stipulations and statement of facts are in words and figures following, to wit:

TERRITORY OF COLORADO,
County of Pueblo, ss:

In the district court of the third judicial district of the Territory
10 of Colorado, sitting within and for the county of Pueblo, of the October term, A. D. 1873.

UNITED STATES FREEHOLD LAND AND EMIgration Company, plaintiff,
vs.
JOHN G. TAMELING, DEFENDANT. } Ejectment.

Agreed case in the above-entitled suit.

It is hereby stipulated and agreed by and between the said plaintiff and the said defendant, by their respective attorneys, that the said suit may be, and hereby is, submitted to the finding and judgment of the said court, without the intervention of the jury, upon the following statement of facts:

That the piece or parcel of land described in the plaintiff's declaration, and for the possession of which the plaintiff brings this suit, is now, and at the time of the commencement of this suit was, situate, lying, and being in the county of Costilla, in the Territory of Colorado, and at the time of the commencement of this suit, and for a long time prior thereto, was in the actual possession of the said defendant, who, before the commencement of said suit, has made valuable improvements thereon.

That the said piece or parcel of land is within the exterior boundaries of and forms a part of a larger tract or parcel of land claimed by the plaintiff in fee-simple, and known as the "Costilla estate," which
11 said estate is bounded as follows, viz: "Beginning at a point one league below the confluence of the Rio Costilla and the Rio del Norte; thence up the Rio del Norte, on the eastern bank thereof, to its confluence with the Rio Culebra; thence easterly, following the southern bank of the Rio Culebra, to a point at or near the junction of the Rio Seco with the Rio Culebra; thence easterly to the Culebra Peaks; thence southerly to the boundary of the lands of Miranda and Beaubien, and to a point at or near the road to Maxwell's; thence westerly, following the mountain-ranges and along the boundary of the lands of Miranda and Beaubien, to a point about one league south of the Rio Costilla, and thence westerly to the place of beginning; containing by estimation five hundred thousand acres, or thereabouts."

That the said Costilla estate prior to the commencement of this suit formed a part and parcel of a yet larger tract or parcel of land, known as the "Sangre de Cristo grant;" from said grant the said estate was segregated by the conveyance thereof by Martin Coates Fisher to the plaintiff, which said conveyance is hereinafter referred to; and which

said grant, as an entirety, (including said Costilla estate,) is described as follows:

"Beginning at a point one Spanish league below the confluence of the Rio de Costilla and the Rio del Norte; thence up the Rio del Norte, on the eastern bank thereof, to a point one league above the
12 mouth of the Rio Trinchara; thence northeast to a point; thence along said mountain, southeast to a point established on the top of said mountain; thence south to the boundary of the lands of Miranda and Beaubien; thence along said boundary to a point about one league south of the Rio de Costilla, and thence west to the place of beginning."

That the said Costilla estate is included in the Sangre de Cristo grant, whether reference be had to the description thereof given in the judicial certificate of possession, or in the petition of Charles Beaubien herein set forth.

That the said Sangre de Cristo grant is known and designated as "Claim No. fourteen of Charles Beaubien" in the letter of the Secretary of the Interior of the United States, transmitting a transcript of the claim of the said Beaubien to said grant, to the Hon. N. P. Banks, Speaker of the House of Representatives, said letter bearing date February 11th, 1857, and which said letter, and all of the documents pertaining to said Sangre de Cristo grant therein referred to, are in the words and figures following, viz:

DEPARTMENT OF THE INTERIOR,
February 11th, 1857.

SIR: I have the honor to transmit herewith for the action of Congress, contemplated by the 8th section of the act of 22d of July, 1854, the transcript of the land-claims in New Mexico, designed for the House of Representatives, as per letter from the Commissioner of the
13 General Land-Office of the 10th instant, a copy of which is enclosed.

Similar documents, submitted by the Commissioner in the same letter for the Senate of the United States, have been appropriately disposed of.

With great respect, your obedient servant,
R. McCLELLAND,
Secretary.

Hon. N. P. BANKS,
Speaker of the House of Representatives.

GENERAL LAND-OFFICE,
February 10th, 1857.

SIR: I have the honor to submit to the Deparmtent the following documents, transmitted to this Office by the surveyor-general of New Mexico with his letter dated 31st December, 1856, to wit:

Claim No. 14, of Charles Beaubien. Transcript for the House of Representatives, embracing copies of grant, (original,) translation of grant, order of prefect's court, notice of claim, deed of administrator, testimony, and report.

Also, similar documents for the United States Senate, with the exception of another transcript of the original grant, which has not been received from the surveyor-general.

Claim No. 29, Casa Colorado. Transcript for the House of Representatives, embracing copies of grant, (original,) translation of grant, notice, testimony, and report.

14 Also, similar documents for the United States Senate, with the exception of another copy of original grant, which has not been received from the surveyor-general.

Claim No. 32, of Hugh Stevenson et als. Transcript for the House of Representatives, embracing copies of grant, (original,) translation of grant, testimony, map of the Bracito tract of land, deed of Francisco Gracia y San Juan to Hugh Stevenson et al., deed of Hugh Stevenson et al. to Francisco Gracia y San Juan, notice, brief, and report.

Also, similar documents for the United States Senate, with the exception of other original copies of grant and map of the Bracito tract of land, which have not been received from the surveyor-general.

The foregoing three claims have been examined and approved by the surveyor-general of New Mexico, who, in transmitting the above-mentioned copies of the documents, requested that the same may be submitted to Congress at their present session for their action upon the claims, and they are therefore accordingly herewith submitted for that purpose.

With great respect, your obedient servant,

THOS. A. HENDRICKS,
Commissioner.

Hon. R. McCLELLAND,
Secretary of the Interior.

Claim No. 14, *of Charles Beaubien.*

Seal fourth. [SEAL.] Two *rials*

15 For the years one thousand eight hundred and forty-two and forty-three.

Most Excellent Governor Don MANUEL ARMIJO:

Louis Lee, a naturalized citizen and resident of the first demarcation of Toas, and Narciso Beaubien, a citizen, and also a resident of the above-named place, appear before your excellency in the manner and form best provided by law and most convenient to us, and state that, desiring to encourage the agriculture of the country and place it in a flourishing condition, and being restricted with lands wherewith to accomplish said purpose, we have seen and examined with great care that embraced within the Costilla, Culebra, and Trincheras Rivers, including the Rito of the Indians and the Sangre de Cristo to its junction with the Del Norte River, and finding in it the qualities of fruitfulness, fertile lands for cultivation and abundance of pasture and water, and all that is required for its settlement and the raising of horned and woolen cattle, and being satisfied with it and knowing that it is public land, we have not hesitated to apply to your excellency, praying you, as an act of justice, to grant to us the possession of a tract of land to each one within the afore-mentioned boundaries, promising to commence the settlement of the same within the time prescribed by law, until the colony shall be established and permanently fixed, provided your excellency be pleased to grant it to us. Such is the offer we make, and swear it is not done in malice.

16 LOUIS LEE.
NARCISO BEAUBIEN.

SANTA FÉ, *December* 27, 1843.

SANTA FÉ, *December* 30, 1843.

Referred to the prefect, in order that if the land petitioned for be not otherwise disposed of, he cause the possession referred to by the petitioners to be given.

ARMIJO. [RUBRIC.]

DONACIAÑO VIGIL, [RUBRIC.]
Acting Secretary.

RIO ARRIBA, *January* 7, 1844.

The justice of the peace to whose jurisdiction belongs the land petitioned for, which I believe should be the third demarcation, having before him the superior decree of the most excellent governor of the 30th of December last, will proceed to the land and place the petitioners in possession, provided it is not to the injury of third parties.

ARCHULETA. [RUBRIC.]

To Don Miguel Sanchez, justice of the peace of the third demarcation:

The undersigned, Mexican citizens and residents of this precinct, in the most approved manner provided by law, appear before you and state that the public land contained in the foregoing statement having been granted to us by the government of the department, as will be seen by the superior decree entered on the margin, and lack-
17 ing the certificate of possession, which will insure to us our legal title thereto, and prevent any one from disturbing us, we pray you to consider us as having presented ourselves, after which we will enlarge this for such ends as our rights may require. Therefore we pray you to grant our request, justice being what we ask for. We swear that it is not done in malice, and in whatever may be necessary, etc.

LOUIS LEE.
NARCISA BEAUBIEN.

TAOS, *January 8th*, 1844.

JANUARY *8th*, 1844.

Considered as presented and received as far as required by law, I, the present justice, proceeding with my attending and instrumental witnesses to the place designated in the foregoing documents and let the possession selected by the petitioners to be given, so that they, their heirs and successors, may hold the same by a just title. The citizen Miguel Sanchez, justice of the peace of the third jurisdiction of Toas, so provided, ordered, and signed, with those in his attendance. To which I certify.

JOSE MIGUEL SANCHEZ. [RUBRIC.]

Attending:
JUAN RAMOR VALDEZ. [RUBRIC.]
PEDRO VALDEZ. [RUBRIC.]

In the pueblo of Taos, on the twelfth day of January, one thousand eight hundred and forty-four, I, the citizen Miguel Sanchez, justice of the peace of this demarcation, by virtue of the direction con-
18 tained in the foregoing decree, proceeded to the land referred to by Don Luis Lee and Don Narciso Beaubien in the foregoing instrument, and being then there with my attending and instrumental witnesses for that purpose appointed, the landmarks of the boundaries were then established according to the manner in which the land is described in the preceding petition, and corresponding with the plat which

I subscribed, and commencing on the east side of the Del Norte River, a mound was erected at one league distance from its junction with the Costilla River; thence following up the Rio del Norte, on the same eastern bank, to one league above the junction of the Trenchera River where another mound was erected; and continuing from west to north, east, following up the current of Trinchera River to the summit of the mountain, where another mound was established; and following the summit of the mountain to the boundary of the lands of Miranda and Beaubien, the fourth mound was established, and continuing on the summit of the Sierra Madre and following the boundary of the aforementioned lands to opposite the first mound erected, on the Del Norte River, where the fifth and last mound was erected; and from thence in a direct line to the first one erected on the north; and being registered, I took them by the hand, walked with them, and caused them to throw earth, pull weeds, and other evidence of possession, whereupon the proceedings were concluded, the boundaries determined without any conflicting claim
19 of any third party, as I, the aforesaid justice, in the name of the sovereignty of the nation, (may God preserve it,) gave to the aforementioned Don Louis Lee and Don N. Beaubien the personal and perfect possession which they solicit, serving as a title for them, their children and successors, in which I will protect and defend them, and I order them not to be deprived thereof without being first heard and sentence given against them according to law and evidence.

In testimony whereof I sign with my attending and instrumental witnesses, who were Messrs. Ceram St. Vrain, Manuel Martin, and Juan Ortega, at present residents of this precinct. To which I certify.

JOSÉ MIGUEL SANCHEZ.

Instrumental:
CERAM ST. VRAIN.
MANUEL ANTONIO MARTIN.
JUAN ORTEGA.

Fees: $30.

NOTE.—The words interlined are valid. [RUBRIC.]

Attending:
JUAN RAMON VALDEZ.
PEDRO VALDEZ.

SURVEYOR-GENERAL'S OFFICE,
Translator's Department, June 18th, 1856.

I, David V. Whiting, translator, certify the foregoing to be a correct translation of the original on file in this office.

DAVID V. WHITING,
Translator.

20 SURVEYOR-GENERAL'S OFFICE,
Santa Fé, December 30th, 1856.

The foregoing is a true copy of the original on file in this office.

WM. PELHAM,
Surveyor-General of New Mexico.

May term, 1847.

DON FERNANDO DE TAOS, *May 3d*, 1847.

This being the regular May term of the prefect's court, it met and was opened according to law, and among other proceedings the following were held. And the said Joseph Pley, administrator as aforesaid,

presented the following petition to the court, in letters and figures as follows, to wit:

To the honorable judge of the prefect court for the county of Taos, Territory of New Mexico:

Your petitioner, Joseph Pley, administrator of the estate of Stephen L. Lee, deceased, respectfully represents, that the personal estate of the said Stephen L. Lee, deceased, is insufficient to pay the debts of the estate, as will appear by the account of your petitioner's administration. The list of debts due to and by the deceased remaining unpaid, and there being no other assets in the hands of your petitioner whereby to enable him to meet the demands against said estate, your petitioner therefore prays that so much of the real estate of the
21 said deceased may be sold by order of the court as will be sufficient to pay the debts of the deceased, and that your honor will make an order ordering your petitioner to proceed to sell all or a part of said real estate at either private or public sale, and upon such terms as to your petitioner, under the instructions of the court, may seem most beneficial to the interest of all concerned.

JOSEPH PLEY,
Administrator of S. L. Lee, Deceased.

DON FERNANDO DE TAOS, *May* 3, 1847.

To Joseph Pley, administrator of the estate of Stephen L. Lee, deceased.

Your petition to the prefect court within and for the county of Taos, in the Territory of New Mexico, praying to said court to sell the real estate of Stephen L. Lee, deceased, or so much thereof as will satisfy such claims as may be presented, the court as aforesaid grants the request contained in said petition, and that you are hereby permitted to sell said real estate at private sale, at not less than the value as appraised.

Witness Robert Crary, clerk of the prefect court for said county, at Don Fernando de Taos, this 3d day of May, A. D. 1847.

ROBERT CRARY, *Clerk.*

Approved:
VINCINTE MARTINEZ, *Prefecto.*

22 I hereby certify that the foregoing is a true copy of the record of the prefect court, on file in my office, of the May term of said court, held in the town of Don Fernando de Taos on the first Monday of May, A. D. 1847, at which time Vincente Martinez was prefect, and Robert Crary clerk.

Witness Pedro Valdez, clerk of the prefect's court of the county of Taos and Territory of New Mexico, and my private seal, there being no seal for said county, August 1st, 1855.

[SEAL.] PEDRO VALDEZ, *Clerk.*

TERRITORY OF NEW MEXICO,
County of Taos:

I, José Benito Martinez, judge of the probate or prefect's court within and for the county of Taos, do hereby certify that Pedro Valdez, who signed the foregoing certificate, and whose signature thereto is genuine, was at the time of so doing clerk of said court.

Given under my hand this sixth day of August, A. D. 1855.

JOSÉ BENITO MARTINEZ,
Judge of Probate.

I subscribed, and commencing on the east side of the Del Norte River, a mound was erected at one league distance from its junction with the Costilla River; thence following up the Rio del Norte, on the same eastern bank, to one league above the junction of the Trenchera River where another mound was erected; and continuing from west to north, east, following up the current of Trinchera River to the summit of the mountain, where another mound was established; and following the summit of the mountain to the boundary of the lands of Miranda and Beaubien, the fourth mound was established, and continuing on the summit of the Sierra Madre and following the boundary of the aforementioned lands to opposite the first mound erected, on the Del Norte River, where the fifth and last mound was erected; and from thence in a direct line to the first one erected on the north; and being registered, I took them by the hand, walked with them, and caused them to throw earth, pull weeds, and other evidence of possession, whereupon the proceedings were concluded, the boundaries determined without any conflicting claim
19 of any third party, as I, the aforesaid justice, in the name of the sovereignty of the nation, (may God preserve it,) gave to the aforementioned Don Louis Lee and Don N. Beaubien the personal and perfect possession which they solicit, serving as a title for them, their children and successors, in which I will protect and defend them, and I order them not to be deprived thereof without being first heard and sentence given against them according to law and evidence.

In testimony whereof I sign with my attending and instrumental witnesses, who were Messrs. Ceram St. Vrain, Manuel Martin, and Juan Ortega, at present residents of this precinct. To which I certify.

JOSÉ MIGUEL SANCHEZ.

Instrumental:
CERAM ST. VRAIN.
MANUEL ANTONIO MARTIN.
JUAN ORTEGA.

Fees: $30.

NOTE.—The words interlined are valid. [RUBRIC.]

Attending:
JUAN RAMON VALDEZ.
PEDRO VALDEZ.

SURVEYOR-GENERAL'S OFFICE,
Translator's Department, June 18th, 1856.

I, David V. Whiting, translator, certify the foregoing to be a correct translation of the original on file in this office.

DAVID V. WHITING,
Translator.

20 SURVEYOR-GENERAL'S OFFICE,
Santa Fé, December 30th, 1856.

The foregoing is a true copy of the original on file in this office.

WM. PELHAM,
Surveyor-General of New Mexico.

May term, 1847.

DON FERNANDO DE TAOS, *May 3d*, 1847.

This being the regular May term of the prefect's court, it met and was opened according to law, and among other proceedings the following were held. And the said Joseph Pley, administrator as aforesaid,

presented the following petition to the court, in letters and figures as follows, to wit:

To the honorable judge of the prefect court for the county of Taos, Territory of New Mexico:

Your petitioner, Joseph Pley, administrator of the estate of Stephen L. Lee, deceased, respectfully represents, that the personal estate of the said Stephen L. Lee, deceased, is insufficient to pay the debts of the estate, as will appear by the account of your petitioner's administration. The list of debts due to and by the deceased remaining unpaid, and there being no other assets in the hands of your petitioner whereby to enable him to meet the demands against said estate, your petitioner therefore prays that so much of the real estate of the
21 said deceased may be sold by order of the court as will be sufficient to pay the debts of the deceased, and that your honor will make an order ordering your petitioner to proceed to sell all or a part of said real estate at either private or public sale, and upon such terms as to your petitioner, under the instructions of the court, may seem most beneficial to the interest of all concerned.

JOSEPH PLEY,
Administrator of S. L. Lee, Deceased.

DON FERNANDO DE TAOS, *May* 3, 1847.

To Joseph Pley, administrator of the estate of Stephen L. Lee, deceased.

Your petition to the prefect court within and for the county of Taos, in the Territory of New Mexico, praying to said court to sell the real estate of Stephen L. Lee, deceased, or so much thereof as will satisfy such claims as may be presented, the court as aforesaid grants the request contained in said petition, and that you are hereby permitted to sell said real estate at private sale, at not less than the value as appraised.

Witness Robert Crary, clerk of the prefect court for said county, at Don Fernando de Taos, this 3d day of May, A. D. 1847.

ROBERT CRARY, *Clerk.*

Approved:

VINCINTE MARTINEZ, *Prefecto.*

22 I hereby certify that the foregoing is a true copy of the record of the prefect court, on file in my office, of the May term of said court, held in the town of Don Fernando de Taos on the first Monday of May, A. D. 1847, at which time Vincente Martinez was prefect, and Robert Crary clerk.

Witness Pedro Valdez, clerk of the prefect's court of the county of Taos and Territory of New Mexico, and my private seal, there being no seal for said county, August 1st, 1855.

[SEAL.] PEDRO VALDEZ, *Clerk.*

TERRITORY OF NEW MEXICO,
County of Taos:

I, José Benito Martinez, judge of the probate or prefect's court within and for the county of Taos, do hereby certify that Pedro Valdez, who signed the foregoing certificate, and whose signature thereto is genuine, was at the time of so doing clerk of said court.

Given under my hand this sixth day of August, A. D. 1855.

JOSÉ BENITO MARTINEZ,
Judge of Probate.

UNITED STATES OF AMERICA,
Territory of New Mexico, ss:

I, W. W. H. Davis, secretary of the Territory of New Mexico,
23 do hereby certify that José Benito Martinez, whose certificate is herein annexed, and who has thereto subscribed his name, was at the time of so doing a judge of probate in and for the county of Taos and Territory aforesaid, duly elected and qualified to act as such, and that the signature purporting to be his is genuine.

In testimony I have hereunto set my hand and affixed my seal of office the 11th day of August, A. D. 1855.

[SEAL.]

W. W. H. DAVIS,
Secretary Territory of New Mexico.

SURVEYOR-GENERAL'S OFFICE,
Santa Fé, December 30, 1856.

The foregoing is a true copy of the original on file in this office.

WM. PELHAM,
Surveyor-General of New Mexico.

This indenture, made this fourth day of May, in the year of our Lord one thousand eight hundred and forty-eight, between Joseph Pley, administrator of Stephan L. Lee, deceased, of the county of Taos and Territory of New Mexico, of the first part, and Charles Beaubien, of the same county and Territory, of the second part, witnesseth: That whereas an order was entered at the January term of the prefect's court of the county of Taos, commanding the said Joseph Pley to sell as administrator of said estate all the real estate of said deceased for the pay-
24 ment of debts allowed against said estate: Now, therefore, by virtue of said order, the said party of the first part, for and in consideration of the sum of one hundred dollars, to him in hand paid by the said party of the second part, the receipt of which is hereby acknowledged, doth hereby give, grant, bargain, sell, convey, transfer, and make over unto the said party of the second part, his heirs and assigns, forever, all the right, title, and interest of the said Stephan L. Lee in and to the following-described tract, lot, or parcel of land: All that certain tract of land known as the Sangre Christi claim, and which was granted by the Mexican government to Stephan L. Lee and Narciso Beaubien, and described as follows: Beginning from a point one league below the confluence of the Rio de Costilla and the Rio del Norte; thence up the Rio del Norte, on the eastern bank, to a point one league above the mouth of the Trinchera; thence north-northeast to a point on the mountain; thence along the mountain southeast, east to an established point on the top of the mountain; thence south, along the line of the Poniete claim of Miranda and Beaubien; thence to a point about a league south of the Rio Costilla; thence west to the place of beginning; and a number of acres not known; to have and to hold the above-granted premises unto the said Charles Beaubien, his heirs and assigns, forever. In testimony whereof the party of the first part has here-
25 unto set his hand and affixed his seal the day and year above written.

[L. S.]

JOSEPH PLEY,
Administrator of the Estate of Stephan S. Lee.

In presence of VITAL TRUJILLO.

TERRITORY OF NEW MEXICO,
County of Taos, ss:

Be it remembered that on this eleventh day of May, in the year eighteen hundred and forty-eight, Joseph Pley, administrator of the estate of Stephan L. Lee, who is personally known to the undersigned, clerk of the circuit court for said county, to be the same person whose name is subscribed to the foregoing instrument in writing, and acknowledged the same to be his act and deed, as administrator as aforesaid, for the purposes therein mentioned.

Taken and certified the day and year above written.

ROBERT CARY, [SEAL.]
Clerk of the Circuit Court.

SURVEYOR-GENERAL'S OFFICE,
Santa Fé, December 30, 1856.

The foregoing is a true copy of the original on file in my office.

WM. PELHAM,
Surveyor-General of New Mexico.

To General William Pelham, surveyor-general of the Territory of New Mexico:

Charles Beaubien, a citizen of the United States and a resident of the Territory of New Mexico, represents that he is the legal owner, in fee, of a certain tract of land lying and being
26 situated in the county of Taos, in said Territory of New Mexico, known as the Sangre de Christo grant, described as follows: Beginning from a point one Spanish league below the confluence of the Rio de Costilla and the Rio del Norte; thence up the Del Norte, on the eastern bank, to a point one league above the mouth of the Rio Trinchera; thence northeast to a point on the mountain; thence along said mountain, southeast, to a point established on the top of the said mountain; thence south to the boundary of the lands of Miranda and Beaubien; thence along said boundary to a point about one league south of the Rio Costilla; and thence west to the place of beginning; all of which points and boundaries are well-known landmarks, and monuments were placed at the same at the time of giving possession of the same to the original grantees. The said Charles Beaubien, the present claimant and actual owner, claims a perfect title to said lands by virtue of a grant made on 30th day of December, A. D. 1843, by Manuel Armijo, governor of the department of New Mexico, and perfected according to law by possession being given by the alcalde, José Miguel Sanchez, on the twelfth day of January, A. D. 1844. Said grant was made according to the usage and laws and customs of the Republic of Mexico, to Luis Lee and Narciso Beaubien, as will appear by reference to said laws and usages, at that time in force, and the Spanish laws, so far as recognized by the government of the Republic of Mexico. The said Charles
27 Beaubien further states that he cannot show the quantity of land claimed by him, only so far as set forth by the foregoing description of points and bounds, nor can he furnish a plat of the survey of the same, as no survey has ever been made. The claimant further states that the said Luis Lee and Narciso Beaubien, after having been put in lawful possession of said grant, conformed to all the laws and regulations in regard to the same as required at that time, and held possession thereof until January 19, 1847, when both were slain in the massacre of Taos of that date; that Narciso Beaubien was the son of the claimant, and according to law all the interest of the said Narciso Beau-

bien, deceased, descends to the present claimant, and that he claims all the right, title, and interest of the said Luis Lee, deceased, by virtue of a deed made by the administrator of Luis Lee the fourth day of May, 1848. Said original grant is herewith filed, marked "A;" deed from Joseph Pley, administrator of Luis Lee, to the claimant marked, "B," also certified copy of the record of the court of probate for said county of Taos authorizing the administrator to sell said right, title, and interest, marked, "C." Claimant further states that he is prepared to prove that the Luis Lee whose name appears in the original grant and the Stephan L. Lee whose name appears in the administrator's deed to the claimant, are one and the same person.

Claimant is prepared further to prove, if deemed necessary, that since the said grant came into his possession he has had made
28 extensive settlements on the same, and that it is becoming under his ownership rapidly populated. The claimant therefore respectfully asks a speedy acknowledgment of his claim.

SMITH & HOUGHTON,
Attorneys for Claimant.

SURVEYOR-GENERAL'S OFFICE,
Santa Fé, December 30, 1856.

The foregoing is a true copy of the original on file in this office.

WILLIAM PELHAM,
Surveyor-General of New Mexico.

Charles Beaubien, Sangre de Christo.

DONACIANO VIGIL, being duly sworn, was interrogated in the following manner:

Question. What office did you hold in year 1843 under the Mexican government?

Answer. Acting secretary of the department of New Mexico.

Question. What office did Manuel Armijo hold at that time?

Answer. He was political governor and military commander of the department.

Question. Is his signature on the grant made to Narciso Beaubien and Luis Lee to the Sangre de Christo and your own signature to said document genuine?

Answer. They are.

Question. What office did Juan Andres Archuleta hold at that time?

Answer. He was the prefect of the northern district, and the land granted was within his district.

29 Question. Do you know the signature of Archuleta, and is the one attached to said grant genuine?

Answer. I do; and it is genuine.

Question. Have you seen the governor and prefect sign their name?

Answer. I have.

Question. Are Stephen L. Lee and Luis Lee one and the same person, and was he as well known by one name as by the other?

Answer. He was the same person, and was as well known by one name as by the other.

Question. Did you know Narciso Beaubien, the son of the present claimant?

Answer. I did, and he and Lee were both killed at the massacre of Taos in the year 1847.

Question. Did Narciso Beaubien have any children?

Answer. He did not; he was sixteen years old when he was killed.

Question. Have you any interest in this claim?

Answer. I have not.

Question. Do you know who was the prefect of Taos County in the year 1847, after the massacre?

Answer. I was acting governor and secretary at that time, and Vincente Martinez was appointed by me to fill that office.

Question. Is your signature to the registry of said document genuine, and in what capacity did you sign?

Answer. It is; and signed as secretary and recorder of land-titles under the Harney code.

DONACIANO VIGIL.

30 Sworn and subscribed to before me this 3d day of December, 1856.

WILLIAM PELHAM.

JOAB HOUGHTON, sworn:

Question. State if knew Narciso Beaubien.

Answer. I did.

Question. State if he was the son of Charles Beaubien, the present claimant?

Answer. He was so considered by his father and mother.

Question. Did you know Stephen L. Lee, and how long did you know him?

Answer. I knew him from 1843 up to the time of his death.

Question. State what the "L" in his name stood for.

Answer. It stood for Louis, and sometimes he signed Stephen Louis Lee; but generaliy Stephen L. Lee, and he was often known among the Mexicans by Louis Lee, or Stephen L. Lee.

Question. Are Lee and Narciso Beaubien alive now?

Answer. They are both dead.

Question. How did they come to their death?

Answer. They were killed in the massacre of Taos, on the 19th of January, 1847.

Question. Do you know if Narciso Beaubien had any children at the time of his death?

Answer. He had not. He was a minor, and could not have been more than sixteen years of age at the time of his death.

31 Question. Do you know the signature of Pedro Valdez, attached to the transcript of the record of the court, and is it genuine?

Answer. I do. He was clerk of the probate court, and saw him sign the transcript referred to.

Question. Do you know the signature of José Benito Martinez, attached to the document mentioned?

Answer. I do; and saw him sign the certificate that Pedro Valdez was clerk of his court.

Question. Do you know the signature of Joseph Pley, administrator of Stephen L. Lee, attached to the conveyance to Charles Beaubien?

Answer. I do; and have been long acquainted with his signature, and have often seen him sign.

Question. Do you know the residence of Vidal Trujillo, subscribing witness to said conveyance?

Answer. I understand he resides at Ruyado, over one hundred miles from this place, (Santa Fé.)

Question. Do you know the signature of Robert Carey, appended to the same document?

Answer. I do; it is his signature, and I know he was clerk of the circuit court at that date.

Question. Were you at that time chief-justice of this Territory?

Answer. I was.

J. HOUGHTON.

Sworn to and subscribed before me this 3d day of December, 1856.

WM. PELHAM.

MANUEL MARTINEZ sworn:

32 Question. Do you know José Miguel Sanchez, the justice of the peace whose signature is affixed to the certificate of possession in this case?

Answer. I have known him since I have had the use of reason.

Question. Do you know his signature, and have you seen him sign?

Answer. I know his signature, and have seen him sign frequently.

Question. Is his signature appended to the foregoing document genuine?

Answer. It is.

Question. Is José Miguel Sanchez dead, and when did he die?

Answer. He died in the month of June of the present year.

MANUEL MARTINEZ.

Sworn to and subscribed before me this 4th day of December, 1856.

W. H. PELHAM,
Surveyor-General.

SURVEYOR-GENERAL'S OFFICE,
Santa Fé, December 30th, 1856.

The foregoing is a true copy of the original on file in this office.

WM. PELHAM,
Surveyor-General.

CHARLES BEAUBIEN, ASSIGNEE OF STEPHEN L. Lee and Narciso Beaubien, deceased, *vs.* THE UNITED STATES. } Sangre de Christo grant.

The above case was set for trial on the 3d day of December, 1856.

33 On the twenty-seventh day of December, 1843, Luis Lee and Narciso Beaubien petitioned Manuel Armijo, civil and military governor of New Mexico, for a grant of land in what is now the county of Taos, "embracing the Costilla, Culebra, and Trinchera Rivers, including the Rito of the Indians, and Sangre de Cristo, to its junction with the Del Norte River." This petition was referred on the 30th day of December, 1843, by Manuel Armijo, the civil and military governor aforementioned, to the prefect, with instructions to give the possession asked for by the petitioners, in case there was no impediment.

On the 7th of January, 1844, Juan Andres Archuletta, the prefect, directed the justice of the peace of the demarcation wherein the land was situated to place the parties in possession, in accordance with the decree of the civil and military governor, by virtue of which the justice of the peace, José Miguel Sanchez placed the parties in possession of the land, with the boundaries contained in the petition, vesting in them, their children and successors, a title in fee to said lands.

Narciso Beaubien, one of the grantees, was killed at the massacre of Taos, in the year 1847; and, dying without issue, his father, Charles Beaubien, the present claimant, became the heir of one undivided half of the land granted, and purchased the remaining undivided half from Joseph Pley, administrator of the estate of Stephen L. Lee, who was killed at the same time and place as Narciso Beaubien.

34 The genuineness of the signatures of the granting officers and the signature of Joseph Pley, administrator of the estate of Stephen L. Lee, are proven by the testimony of competent witnesses. The signature of the clerk of the probate court, attached to a transcript of the record of the court ordering the sale of the property of Stephen L. Lee, deceased, is also proved to be genuine. It is also proven that Stephen L. Lee and Luis Lee, assigned in the original petition, were one and the same individual, and that Narciso Beaubien, the son of Charles Beaubien, the present claimant, died without issue. The testimony also shows that the land has been occupied from the time the grant was made up to the present day.

The supreme authorities of the remote province of New Spain, afterwards the Republic of Mexico, exercised from time immemorial certain prerogatives and powers which, although not positively sanctioned by congressional enactments, were universally conceded by the Spanish and Mexican governments, and there being no evidence that these prerogatives and powers were revoked or repealed by the supreme authorities, it is to be presumed that the exercise of them was lawful. The subordinate authorities of the provinces implicitly obeyed these orders of the governors, which were continued for so long a period until they became the universal custom or unwritten law of the land, wherein they did not conflict with any subsequent congressional enactment.

35 Such is the principle sanctioned by the Supreme Court of the United States, as expressed in the case of Fremont vs. The United States, (17 Howard, page 542,) which decision now governs all cases of a similar nature.

The grant being a positive one, without any subsequent conditions attached, and made by a competent authority, and having been in the possession and occupancy of the grantees and their assigns from the time the grant was made, it is the opinion of this office that the grant is a good and valid one, and that a legal title vests in Charles Beaubien to the land embraced within the limits contained in the petition. The grant is therefore approved by this Office and transmitted to the proper Department, with the recommendation that it be confirmed by the Congress of the United States.

WM. PELHAM,
Surveyor-General.

SURVEYOR-GENERAL'S OFFICE,
Santa Fé, N. M., December 30th, 1856.

SURVEYOR-GENERAL'S OFFICE,
Santa Fé, N. M., December 31*st*, 1856.

The foregoing is a true copy of the original on file in this office.
WM. PELHAM, *Surveyor-General.*

That Narciso Beaubien, the cograntee with Stephen L. Lee, (alias Luis Lee,) of said claim No. fourteen, died in the year one thousand eight hundred and forty-seven, without issue, whereby his father,

36 the said Charles Baubien, became the sole heir of whatever interest the deceased had in said land-grant or claim; that in the year aforesaid the said Lee also died; that afterwards and on the fourth day

of May, in the year one thousand eight hundred and forty-eight, the said Charles Beaubien acquired the interest of the said Lee in said land-grant, by a purchase and conveyance thereof in due form of law, from the administrator of the estate of the said Lee; that the said Charles Beaubien had and possessed all of the rights, titles, and interests, both in law and equity, in said grant, which by the proceedings above set forth and referred to in the aforesaid letter of the Secretary of the Interior were vested in the said Narciso Beaubien and the said Stephen L. Lee, at the time of their death as aforesaid.

That the said Charles Beaubien retained his aforesaid interest in said grant until after the passage and approval of a certain act of the Congress of the United States, entitled "An act to confirm certain private land-claims in the Territory of New Mexico," approved June 21st, 1860.

That the claim designated in said act of Congress as claim number fourteen is the claim of the said Charles Beaubien to that tract of land hereinbefore described by its boundaries, and herein designated as the "Sangre de Cristo grant," and which tract of land includes the said "Costilla estate."

That after the passage and approval of the said act of Con-
37 gress and on the seventh day of April, A. D. one thousand eight hundred and sixty-four, the right, title, and interest of the said Charles Beaubien in and to the said Sangre de Cristo grant, otherwise the said claim number fourteen, was absolutely conveyed and vested in Hon. William Gilpin; and thereafter and prior to the fourteenth day of July, A. D. one thousand eight hundred and seventy, the said Gilpin conveyed the right, title, and interest in said grant by him so derived to one Morton Coates Fisher; that thereafter, and on the day and year last aforesaid, the said Morton Coates Fisher absolutely conveyed to the plaintiffs his right, title, and interest derived as aforesaid in and to that part and portion of the said grant or claim number fourteen, generally known and herein designated as the "Costilla estate," the boundaries of which said estate, as taken from the said conveyance thereof, are hereinbefore given, and include the piece or parcel of land described in the plaintiff's declaration, and the possession of which is in controversy in this suit.

That the said plaintiff has not conveyed or granted his title derived as aforesaid to the piece or parcel of land described in the declaration in this cause, nor the right of the possession thereof, to the defendant or other person; but has claimed the title to and possession of said land ever since the conveyance as aforesaid by the said Fisher to the plaintiff.

If the facts aforesaid, under the law, show that the plaintiff is
38 entitled to the possession of the land described in the declaration in this case, then the finding of the court shall be for the plaintiff; if the said facts under the law show that the plaintiff is not entitled to such possession, then the finding of the court shall be for the defendant; and upon the finding of the court the proper judgment in ejectment for the plaintiff, or for the defendant, as the case may be, shall be entered of record in said court.

The United States Freehold Land and Emigration Company, plaintiff,

By H. C. THATCHER,
Its Attorney.
JOHN G. TAMELING,
By J. W. HENRY,
His Attorney.

And afterwards, to wit, on the first day of November, A. D. one thousand eight hundred and seventy-three, the said day being one of the days of said term of said court, came the said United States Freehold Land and Emigration Company, the said plaintiff, by its attorney, H. C. Thatcher, and the said defendant, by his attorney, J. W. Henry, also came, and the said parties filed herein their stipulation and statement of facts, in which they agree that this suit may be and is submitted to the finding and judgment of this court, without the intervention of a jury, upon a certain statement of facts set forth in the said stipulation; and the court not being sufficiently advised in the premises, doth reserve the
39 finding and judgment thereon until another day.

And afterwards, to wit, on the twenty-sixth day of December, in the year of our Lord one thousand eight hundred and seventy-three, the said day being one of the days of the December term, A. D. 1873, of said court, begun and held at the court-house in the city of Pueblo, in said county of Pueblo and Territory aforesaid, on Tuesday, the ninth day of December, in the year last afore mentioned.

Present, Hon. Moses Hallett, chief justice of Colorado Territory, and judge of the third judicial district of said Territory; J. W. Henry, esq., district attorney of the third judicial district aforesaid; Geo. A. Bute, clerk of said court; Abe B. Ellis, sheriff of Pueblo County.

Came the said plaintiff, The United States Freehold Land and Emigration Company, by its attorney, H. C. Thatcher, and the said defendant, John G. Tameling, by his attorney, J. W. Henry, also came, and the court, being fully advised in the premises, did find as follows, to wit: That the said defendant is guilty of unlawfully withholding from the plaintiff the premises described in his declaration in this cause as follows, to wit: "Situated in the county of Costilla, Territory of Colorado, and bounded and described as follows, to wit: Beginning at a cedar stake set on the south bank of the southern branch of the Culebra River, on
40 the eastern line of what is known as the Henry Blackmore ranch; thence running due south seventy chains to a mound with a stake in the centre; thence east twenty chains to a mound with a stake in the centre; thence north one hundred chains to the south bank of the southern branch of Culebra River to a cedar stake; thence along said south bank of the southern branch of the Culebra River to the place of beginning, containing one hundred and sixty acres;" and that the plaintiff is well entitled to hold the same in fee. Therefore it is considered by the court that the said plaintiff do recover against the said defendant the possession of said premises according to the finding of the court, and that he have a writ of possession therefor, according to the force, form, and effect of said recovery. And it is further considered that the said plaintiff do have and recover of and from the said defendant its costs and charges by it about this suit in this behalf expended to be taxed, and that execution issue therefor.

And thereupon the said defendant prayed an appeal from the judgment aforesaid to the supreme court of the Territory of Colorado, which is granted by the court. And it is ordered by the court that the said defendant, on or before the first day of February, A. D. one thousand eight hundred and seventy-four, file his appeal bond with the clerk of this court, with security to be approved by said
41 clerk in the sum of five hundred dollars, conditioned according to law.

And afterwards, to wit, on the tenth day of January, in the year of our Lord one thousand eight hundred and seventy-four, the said defendant, John G. Tameling, filed in said clerk's office a certain bond, approved, which is in the words and figures following, to wit:

Know all men by these presents that we, Jonn G. Tameling, of the county of Costilla, and Territory of Colorado, as principal, and Fred Hofmeister, Edward Hofmeister, and Theod. Wm. Koopman, of the same place, as securities, are held and firmly bound unto the United States Freehold Land and Emigration Company, of the same county and Territory, in the penal sum of five hundred dollars, lawful money of the United States, for the payment of which sum well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly, severally, and firmly, by these presents.

Witness our hands and seals this sixth day of January, A. D. one thousand eight hundred and seventy-four.

The condition of this obligation is such that whereas the said United States Freehold Land and Emigration Company did, on the twenty-sixth day of December, A. D. one thousand eight hundred and seventy three, in the district court of the third judicial district of Colorado Territory, in and for the county of Pueblo, of the December term thereof, A. D. one thousand eight hundred and seventy-three, recover judgment in an action of
42 ejectment against the above-bounden John G. Tameling for the possession of certain premises situated in the county of Costilla, in the Territory of Colorado, and bounded and described as follows, to wit: Beginning at a cedar stake set on the south bank of the southern branch of the Culebra River, on the eastern line of what is known as the Henry Blackmon ranch; thence running due south seventy chains to a mound with a stake in the centre; thence east twenty chains to a mound with a stake in the centre; thence north one hundred chains to the south bank of the southern branch of the Culebra River to a cedar stake; thence along said south bank of the southern branch of the Culebra River to the place of beginning, containing in all one hundred and sixty acres; and costs of said suit from which said judgment of the said district court the said John G. Tameling hath prayed for and obtained an appeal to the supreme court of said Territory.

Now, therefore, if the said John G. Tameling shall duly prosecute his said appeal with effect, and moreover perform the judgment and pay the costs, interest, and damages rendered and to be rendered against him, in case the judgment shall be affirmed in said supreme court, then the above obligation to be void, otherwise to remain in full force and effect.

JOHN G. TAMELING. [SEAL.]
EDWARD HOFMEISTER. [SEAL.]
FRED. HOFMEISTER. [SEAL.]
T. W. KOOPMAN. [SEAL.]

Approved by me this tenth day of January, A. D. one thousand eight hundred and seventy-four.

GEORGE A. BUTE, *Clerk.*

43 TERRITORY OF COLORADO,
County of Pueblo, ss:

I, Geo, A. Bute, clerk of the district court of the third judicial district of Colorado Territory, within and for the county of Pueblo, hereby

certify the above and foregoing to be a true, perfect, and complete copy of the record and proceedings and of the papers filed and forming part of or appertaining to the record, in a certain cause pending in said court on the common-law side thereof, wherein the United States Freehold Land and Emigration Company is plaintiff, and John G. Tameling is defendant.

{ DISTRICT COURT OF PUEBLO COUNTY, COLORADO TERRITORY. SEAL. } Witness my hand and the seal of said court this tenth day of January, in the year of our Lord one thousand eight hundred and seventy-four.

GEORGE A. BUTE, *Clerk.*

(Endorsed:) No. 160. Supreme court. John G. Tameling, appellant, vs. United States Freehold Land and Emigration Company, appellee. In ejectment. Transcript of record. Filed March 12th, 1874. John W. Webster, clerk.

44 And afterwards, to wit, on the twelfth day of March, A. D. 1874, the same being one of the regular juridical days of the February term, A. D. 1874, of the supreme court of the Territory of Colorado, came the said appellant, by his attorneys, and filed in said court his assignment of errors in said cause; which said assignment of errors is in words and figures as follows, to wit:

In the supreme court of the Territory of Colorado, of the February term, A. D. 1874.

JOHN G. TAMELING, APPELLANT,
vs.
THE UNITED STATES FREEHOLD LAND & EMIGRATION COMPANY, appellee.

And now comes John G. Tameling, appellant in the above entitled cause, and says that in the record and proceedings aforesaid there is manifest error, in this, to wit:

First. The district court erred in rendering judgment for the plaintiff on the agreed statement of facts filed in this case, (which was all the evidence in the case,) in this, that under the colonization act of Mexico, in force at the time the Sangre de Christo grant was created, no grant could legally be made in excess of twenty-two leagues to two
45 grantees, it being conceded by said agreed statement of facts that the Costilla estate alone, which is a part & parcel of said Sangre de Christo grant, contains alone by estimate five hundred thousand acres of land or thereabouts, which is five times as much land as could legally be granted to two parties.

Second. Because the district court erred in construing the act of confirmation by Congress to ratify the original grant to a greater extent than that for which, under the colonization act of Mexico of A. D. 1824, it could have been originally created.

By reason whereof the appellant prays the judgment of the district court may be reversed.

J. W. HENRY &
GERRY & TAYLOR,
Attys. for Appellant.

(Endorsed:) 160. John G. Tameling, appellant, vs. The United States Freehold Land & Emigration Company, appellees. Assignment of errors.

Filed March 12th, 1874. John W. Webster, clerk. Gerry & Taylor, J. W. Henry.

46 And afterwards, to wit, on the same day, it still being of the February term, A. D. 1874, of the supreme court of the Territory of Colorado, came the said appellee, by its attorneys, and filed in said court its joinder in error; which said joinder in error is in words and figures as follows, to wit:

TERRITORY OF COLORADO:

In the supreme court, of the February term, A. D. 1874.

JAMES G. TAMELING, APPELLANT,
vs.
THE UNITED STATES FREEHOLD LAND & EMIGRATION COMPANY, appellee. } Joinder in error.

And the said The United States Freehold Land & Emigration Company, appellee, by Henry C. Thatcher, Alfred Sayre, and Chas. W. Wright, its attorneys, comes and says that there is no error either in the record and proceedings aforesaid or in giving judgment aforesaid, in manner and form as above assigned, and therefore it prays that the said judgment may be affirmed, and that its costs may be adjudged to it, etc.

By HENRY C. THATCHER,
ALFRED SAYRE, AND
CHAS. W. WRIGHT,
Attys. for Deft. in Error.

47 (Endorsed:) 160. John G. Tameling, appellant, vs. The United States Freehold Land & Emigration Company, appellee. Joinder in error. Filed March 12th, 1874. John W. Webster, clerk. Henry C. Thatcher, Alfred Sayre, & Chas. W. Wright, attys.

And afterwards, to wit, on the same day, it still being one of the regular juridical days of the February term, A. D. 1874, of the supr me court of Colorado, came the said parties, by their attorneys respectively, and filed in said court their stipulation; which said stipulation is in words and figures as follows, to wit:

TERRITORY OF COLORADO, *ss:*

In the supreme court of the February term, A. D. 1874.

JOHN G. TAMELING, APPELLANT,
vs.
THE UNITED STATES FREEHOLD LAND AND EMIGRATION COMPANY, appellee.

It is hereby agreed by and between the parties to the above entitled suit that the same may be docketed and the papers therein filed
48 with the same effect as if the said filing had been done on or before the third day of said term of said court.

GERRY & TAYLOR,
Attorneys for Appellant.
HENRY C. THATCHER,
ALFRED SAYRE,
CHAS. W. WRIGHT,
For Appellee.

(Endorsed:) 160. John G. Tameling, appellant, vs. United States Freehold Land and Emigration Company, appellee. Stipulation. Filed March 12th, 1874. John W. Webster, clerk.

And afterwards, to wit, and on the same day, it still being of the February term, A. D. 1874, of said supreme court of the Territory of Colorado, came the said appellant, by his attorneys, and filed in said court an affidavit in said cause; which affidavit is in words and figures as follows, to wit:

TERRITORY OF COLORADO, *ss:*

In the supreme court, of the February term, A. D. 1874.

JOHN G. TAMELING, APPELLANT,
vs.
49 THE UNITED STATES FREEHOLD LAND & Emigration Company, appellee.

John G. Tameling, of the county of Costilla and Territory of Colorado, appellant in the above-entitled cause, being duly sworn, on oath states that the matters presented by the record in said cause were litigated in good faith about a matter in actual controversy between the United States Freehold Land and Emigration Company, the appellee, and this affiant, the said John G. Tameling, appellant herein, and that the opinion of the supreme court of Colorado Territory is not sought with any other design than to adjudicate and settle the law relative to the matter in controversy between the parties to the record in this cause.

JOHN G. TAMELIN .

{ DISTRICT COURT OF PUEBLO } Sworn to and subscribed before me
{ COUNTY, COLORADO. SEAL. } this day of January, A. D. 1874.
GEORGE A. BUTE, *Clerk.*

(Endorsed:) 160. John G. Tameling, appellant, vs. United States Freehold Land and Emigration Company, appellee. Affidavit. Filed March 12th, 1874. John W. Webster, clerk.

50 And afterwards, to wit, on the twenty-fifth day of March, A. D. 1874, the same being one of the regular juridical days of the supreme court of the Territory of Colorado, of the February term, A. D. 1874, the following proceedings were had and entered of record in said cause in said supreme court, to wit:

JOHN G. TAMELING, APPELLANT,
vs.
THE UNITED STATES FREEHOLD LAND & EMIgration Company, appellee. } No. 160. Appeal from district court, Pueblo County.

At this day comes the said appellant, by M. B. Gerry, esq., his attorney, and the said appellee, by Messrs. Sayre & Wright, its attorney, also comes, and thereupon this cause come on to be heard, and was submitted upon the brief and argument of said appellee to the consideration and judgment of the court, and it is ordered by the court that the said appellant reply thereto by Friday the twenty-seventh day of March next ensuing.

And afterwards, to wit, on the tenth day of July, A. D. 1874, the same being one of the regular juridical days of the February term, A. D. 1874, of the supreme court of the Territory of Colorado, the following proceedings were had and entered of record in said court in said
51 *court*, to wit:

JOHN G. TAMELING, APPELLANT,
vs.
THE UNITED STATES FREEHOLD LAND & EMIGRATION Company, appellee.
} No. 160. Appeal from district court, Pueblo County.

On this day comes the said appellant, by M. B. Gerry, esq., his attorney, and the said appellee, by Messrs. Sayre & Wright, its attorneys also come, and thereupon this cause come on to be heard as well upon the transcript of judgment and other proceedings had in this cause, in the said district court for the county of Pueblo, as also upon the matters herein assigned for error, and the same having been argued by counsel, it appears to the court here that there is no error in the record and proceedings aforesaid, or in giving judgment aforesaid. On consideration whereof, it is ordered by the court that the judgment aforesaid, in form aforesaid given, be in all things affirmed and stand in full force and effect; that the opinion of the court, when filed, be recorded, and that the said appellee recover of and from the said appellant its costs and charges in this behalf expended, and that it have execution therefor.

His honor Justice Wells did not participate in this case.

52 And afterwards, to wit, on the twentieth day of August, A. D. 1874, came the said John G. Tameling, plaintiff in error, by Messrs. Gerry & Taylor, and J. W. Henry, esq., his attorneys, and lodge' in the office of the clerk of the supreme court of the Territory of Colorado his certain writ of error in the above-entitled cause, which said original writ of error is hereto attached, and is in words and figures as follows, to wit:

53 UNITED STATES OF AMERICA, *ss:*

The President of the United States of America to the chief-justice and associate justices of the supreme court of the Territory of Colorado, greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said supreme court before you, between John G. Tameling, appellant, and the United States Freehold Land and Emigration Company, appellee, a manifest error hath happened, to the great damage of the said John G. Tameling, as by his complaint appears:

We being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington on the second Monday in October next, in the
54 said Supreme Court to be then & there held, that, the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error what of right and according to the laws and custom of the United States should be done.

Witness the honorable Morrison R. Waite, Chief-Justice of the said Supreme Court, the twentieth day of August, in the year of our Lord one thousand eight hundred and seventy-four, and of the Independence of the United States the ninety-eighth.

[SEAL.]

JNO. W. WEBSTER,
Clerk Supreme Court, Colorado Territory.

(Endorsed:) Writ of error. John G. Tameling, plff. in error, vs. The United States Freehold Land and Emigration Company, deft. in error. Filed August 20th, 1874. Jno. W. Webster, clerk.

55 And afterwards, to wit, on the ninth day of September, A D. one thousand eight hundred and seventy-four, came the said plaintiff in error, by Messrs. Gerry & Taylor, his attorneys, and filed in the office of the clerk of the supreme court of the Territory of Colorado, his certain bond in error in the above cause; which is in words and figures as follows, to wit:

Know all men by these presents that we, John G. Tameling, of San Luis, in the county of Costilla, Territory of Colorado, and Dr. Med. Joseph Kugler, and Leopold Mayer, of San Luis, Costilla County, Territory of Colorado, are held and firmly bound unto the United States Freehold Land and Emigration Company, in the sum of five hundred dollars, lawful money of the United States, to be paid to the said United States Freehold Land and Emigration Company, its certain attorney, successors, and assigns, to which payment well and truly to be made, we bind ourselves and each of us, jointly and severally, and our and each of our heirs, executors, and administrators, firmly by these presents, sealed with our seals, and dated this the twenty-eight' day of August, in the year of our Lord one thousand eight hundred and seventy-four.

Whereas lately, at a term of the supreme court of the Territory of Colorado, in a suit depending in said court between John G.
56 Tameling, appellant, and The United States Freehold Land and Emigration Company, appellee, judgment was rendered against the said John G. Tameling, and the said John G. Tameling having obtained his writ of error from the Supreme Court of the United States and filed a copy thereof in the clerk's office of the said court to reverse the judgment in the aforesaid suit, and a citation directed to the said United States Freehold Land and Emigration Company, citing and admonishing it to be and appear at the Supreme Court of the United States, to be holden at Washington, in the District of Columbia, on the second Monday of October next:

Now, therefore, the condition of this obligation is such that if the above-named John G. Tameling shall prosecute his said writ of error to effect and answer all costs and damages, if he shall fail to make good his plea, then this obligation shall be void; otherwise to remain in full force and virtue.

JOHN G. TAMELING. [SEAL.]
JOSEPH KUGLER, M. D. [SEAL.]
LEOPOLD MAYER. [SEAL.]

Sealed and delivered in presence of—
EDWARD HOFMEISTER.

Approved this September 9th, A. D. 1874.

EBENEZER T. WELLS,
Associate Justice Supreme Court Colorado Territory.

57 (Endorsed:) 160. John G. Tameling, plff. in error, vs. The United States Freehold Land and Emigration Company, deft. in error. Bond to defendant in error. Filed Sept. 9th, 1874. John W. Webster, clerk.

And afterwards, to wit, on the same day, came the said plaintiff in error, by Messrs. Gerry & Taylor, his attorneys, and filed in the office of the clerk of said supreme court a citation directed to the said defendant in error in said cause, which said original citation and endorsement of service thereon is hereto attached, in words and figures as follows, to wit:

58 The United States of America to the United States Freehold Land & Emigration Company, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States to be holden at Washington on the second Monday of October next, pursuant to a writ of error filed in the clerk's office of the Supreme Court of the United States, wherein John G. Tameling is plaintiff in error, and you are defendant in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error, as in the said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the honorable Ebinezer T. Wells, one of the associate justices of the supreme court of the Territory of Colorado, this the 9th day of September, (A. D. 1874,) in the year of our Lord one thousand eight hundred and seventy-four.

EBENEZER T. WELLS,
Associate Justice Supreme Court Colorado Territory.

59 DENVER, COLORADO, *Sept. 9th*, 1874.

We hereby acknowledge service of the foregoing citation.

SAYRE, WRIGHT & BUTLER,
Attys. for U. S. Freehold Land & Emigration Co.

(Indorsed:) Citation. John G. Tameling, plff. in error, vs. The United States Freehold Land & Emigration Company, deft. in error. Filed Sept. 9th, 1874. Jno. W. Webster.

60 And afterwards, to wit, on the same day, came the said plaintiff in error, by Messrs. Gerry & Taylor, his attorneys, and filed in the office of the clerk of the supreme court of the Territory of Colorado an affidavit of valuation of property in the above cause; which said affidavit is in words and figures as follows, to wit:

TERRITORY OF COLORADO,
County of Costilla, ss:

Personally came before me, a clerk of the district court of the 3d judicial district, Col. Territory, John G. Tameling, who, being duly sworn, deposes and says that he was appellant in a cause lately depending in the supreme court of the Territory of Colorado, entitled John G. Tameling, appellant, vs. The United States Freehold Land and Emigration Company, appellee, in ejectment, and that on the final hearing of said cause judgment was rendered against the said John G. Tameling, and the said deponent, John G. Tameling, being dissatisfied with the judgment rendered in said cause by the said court, has obtained

from the Supreme Court of the United States a writ of error to remove said cause to the said Supreme Court of the United States, and that the value of the property in controversy in said cause exceeds the sum of one thousand dollars.

JOHN G. TAMELING.

61 DISTRICT COURT OF COLORADO TERRITORY, THIRD JUDICIAL DISTRICT. SEAL. Subscribed and sworn to before me this 28th day of August, A. D. 1874.

GEORGE A. BUTE, *Clerk*,
By WM. H. MEYER, *Deputy*.

(Endorsed:) 160. John G. Tameling, plff. in error, vs. The United States Freehold Land & Emigration Company, deft. in error. Affidavit of valuation. Filed Sept. 9th, 1874. Jno. W. Webster, clerk.

62 UNITED STATES OF AMERICA,
Territory of Colorado, ss:

I, John W. Webster, clerk of the supreme court of the Territory of Colorado, do hereby certify that the above and foregoing is a true and complete copy of the record of proceedings had and judgment given in the cause therein mentioned, as the same now appears remaining in my office.

In witness whereof I have hereunto subscribed my name and affixed the seal of the supreme court of the Territory of Colorado, at Denver, this twelfth day of September, A. D. 1874.

[SEAL.] JNO. W. WEBSTER,
Clerk of the Supreme Court, Colorado Territory.

63 To which certified transcript of record, under the amendment to the eighth rule of the Supreme Court of the United States, is hereto annexed a copy of the opinion of the supreme court filed in said cause, which is in words and figures as follows, to wit:

In the supreme court of Colorado Territory, February term, 1874.

JOHN G. TAMELING, APPELLANT,
vs.
UNITED STATES FREEHOLD LAND & EMIGRATION Company, appellee.

BELFORD, J.:

The agreed statement of facts filed in this cause in the court below and in pursuance to which judgment was rendered, presented but a single question for decision, namely, Was private land-claim number fourteen, (14,) usually known as the Sangre de Christo grant, a valid grant as to all the land contained within the exterior boundaries of said grant, as shown by the judicial certificate of possession and the report of the surveyor-general of New Mexico to the Commissioners of the General Land-Office, or is the act of Congress approved June 21st, 1860, entitled

"An act to confirm certain private land-claims in the Territory of
64 New Mexico," to be construed as only a confirmation of twenty-two square leagues—eleven square leagues to each of the original grantees?

The record shows that the premises in controversy are situated within the exterior boundaries of a certain tract of land known as the "Cos-

tilla estate," which estate constituted a part and was carved out of the Sangre de Christo grant. The court below held that the plaintiff was entitled to the premises in dispute in fee, and that it have a writ of possession therefor. From this finding the defendant prayed an appeal. The assignment of errors presents the same point raised in the court below.

It is well known as a matter of history that from a time coeval with the establishment by Spain of colonies in this country, the King and likewise his provincial governors were in the habit of making extensive grants of land to individuals for pastoral, agricultural, and colonization purposes. After Mexico had achieved her independence the same policy was pursued by the supreme and local governments of that country.

On the 27th day of December, 1843, Luis Lee and Narcisa Beaubien petitioned Manuel Armijo, civil and military governor of New Mexico, for a grant of land "embracing the Costilla, Culebra, and Trinchera Rivers, including the Reta of Indians and Sangre de Christo to
65 its junction with the Del Norte River." This petition was referred on the 30th day of December, 1843, by Manuel Armijo, governor as aforesaid, to the prefect, with instructions to give the possession asked for by the petitioners, in case there was no impediment. On the 7th day of January, 1844, Juan Andres Archuletta, the prefect, directed the justice of the peace of the demarcation wherein the land was situated to place the parties in possession, in accordance with the decree of the governor, by virtue of which the justice of the peace, José Miguel Sanchez, on the 12th day of January, 1844, accompanied by his instrumental and attending witnesses, proceeded to the point where the land petitioned for was situated, and going through the prescribed method of investiture, placed Lee and Beaubien in possession of a tract of land whose boundaries were indicated in the following manner: "Commencing on the east side of the Del Norte River, a mound was erected at one league distance from its junction with the Costilla River; thence following the Rio del Norte on the same eastern bank to one league above the junction of the Trinchera River, where another mound was erected; and continuing from west to northeast, following up the current of Trinchera River to the summit of the mountain, to the boundary of the lands of Miranda and Beaubien, the fourth mound was established; and continuing on the summit of the Sierra
66 Madre, and following the boundary of the aforementioned lands to opposite the first mound erected on the Del Norte River, where the fifth and last mound was erected; and from thence in a direct line to the first erected on the north." If the act of Congress of June 21st, 1860, above referred to, is to be regarded as a confirmation of the Sangre de Christo grant, by metes and bounds, and to the extent of all the land contained within the exterior boundaries of said grant, as shown by the judicial certificate of possession, then the judgment of the court below is correct, for the plaintiff derives its title through this act of Congress, and the tract sued for constitutes a part of said grant. The act of Congress is in the following language: "That the private land-claims in the Territory of New Mexico, as recommended for confirmation by the surveyor-general of that Territory, and in his letter to the Commissioner of the General Land-Office, * * * * * designated as numbers one, three, four, six, eight, nine, ten, twelve, fourteen, fifteen, sixteen, seventeen, and eighteen, be, and they are hereby, confirmed: Provided, That the claim No. 9, in the name of John Scolly and others, shall not be confirmed for more than five square leagues, and that claim No. 17, in the name of Cornelio Vigil and Ceram St. Vrain, shall not be confirmed for more

than eleven square leagues to each of said claimants." It becomes
67 important to enquire how and to what extent the claim number fourteen, of Lee and Beaubien, was confirmed. The act itself furnishes the answer, "as recommended for confirmation by the surveyor-general." What was his recommendation? That the tract of land petitioned for by Lee and Beaubien, "embracing the Costilla, Culebra, and Trinchera Rivers, including the Rito of the Indians and Sangre de Christo to its junction with the Del Norte River," being the land of which they had been placed in possession by the justice of the peace under the directions of the governor and prefect, be confirmed. The surveyor-general's report is made a part of the act of confirmation by reference in express terms, and "when the King's grant refers in general terms to a certainty, it contains as express mention of it as if the certainty had been expressed in the same charter." 10 Coke, 64, *a*. It is claimed, however, by counsel for appellant that by the colonization laws of Mexico, passed in 1824, the provincial governors were restrained from granting to any individual more than eleven square leagues, and inasmuch as the Costilla estate alone contains five hundred thousand acres, being five times the quantity which could legally be granted to two persons, the act on the part of the governor was simply void, and that no obligation
68 resting on the United States under the treaty of Guadalupe Hidalgo to grant to any citizen more than he was entitled to claim from the Mexican government, the confirmation must be limited to the exact amount of eleven square leagues to each of the parties, Lee and Beaubien. It is further insisted that inasmuch as the report of the surveyor-general states Lee and Beaubien "were the legal owners in fee of said claim," and that inasmuch as they could be the legal owners of but twenty-two square leagues, the maximum amount which could be granted the original grantees by the governor of the province, it must follow that application to Congress was for a confirmation of "a legal estate in fee," to wit, twenty-two square leagues. It is apparent from the report of the surveyor-general that the quantity of land included within these natural boundaries was not known when his recommendation was made to the Commissioner of the General Land-Office or submitted to the Senate.

It is also apparent that this fact was within the knowledge or open to the knowledge of Congress when the act above referred to was passed, and had it been the intention of Congress to limit the quantity granted to an amount less than that embraced within the natural bound-
69 aries they could have imposed such limitations on their act of confirmation and quitclaim. It does not appear that any fraud or suppression of facts had been committed by the parties seeking the confirmation, and therefore it seems to me that the act must be regarded as an unconditional ratification of the grant as previously made, and as such was equivalent in law to an original authorization.

Furthermore, the claim was for the entire tract included within the natural boundaries, for it affirmatively appeared that the lands had been marked out and delivered by the Mexican officers and were possessed by the claimants and those holding under them. The confirmation of such a claim is ex necessitate of the whole. And the fact that the quantity of land turns out to be larger than supposed should not be allowed to diminish the force of the act.

We must regard it as a valid confirmation for the entire tract, or treat the act of Congress as void and con*firm*ing no rights on Lee and Beaubien, for it nowhere points out the location of a less quantity than the whole. Nor does it provide a mode for the location of the twenty-

70 two square leagues, so that they may be distinguished from the additional lands within the boundaries of the original claim.

That this could not have been the intention of Congress is apparent not only from the language of the act itself, but also from the fact that the same act confirmed claims Nos. 5 and 17, to only a limited extent each, and provided the mode in which the amount of land so confirmed should be definitely located and set apart from the balance of the land claimed but not confirmed to the respective claimants. As to the proposition that the surveyor-general only recommended a confirmation of the legal estate to which the claimants would be entitled under the Mexican law, we think it is met by the argument of counsel for the appellee. The surveyor-general recommends the confirmation of the grant to the full extent of the petitioners' claim, because it is his opinion "that the grant is a good and valid one and that the legal title vests in Charles Beaubien as the successor of Lee and Narcisa Beaubien." He tells us substantially that the grants by governors of provinces, though not sanctioned positively by enactments of the Mexican Congress, yet had been long regarded valid, and that this grant, by reason of the custom of the country and the undisputed occupancy of it by the
71 grantees and their representatives from the time it was made, should in justice be confirmed to the claimant, he having a title sufficient thereto under the jurisdiction of the former rulers of the country. However inferior this estate may have been to an English fee-simple, our Government was bound by treaty to respect whatever rights the claimant had. The treaty of Guadalupe Hidalgo found the grantees in the full, undisturbed possession of the premises in question, holding under a grant duly made by the governor. The 8th and 9th articles of that treaty embraced provisions similar to those contained in all treaties between civilized nations, which provide for a cession of territory from the one to the other, stipulations intended to guard and protect in the most efficient manner the private property of individuals.

In the case of The U. S. vs. Arredendo, 6 Peters, 710, the Supreme Court say: "Where Congress have, by confirming the reports of commissioners or other tribunals, sanctioned the rules and principles on which they were founded, it is a legislative affirmation of the construction put by these tribunals on the laws, confirming and prescribing the rules on which it should be exercised, or, which is to all intents and purposes of the same effect in law, it is a legislative ratification of
72 an act done without previous authority, and the subsequent recognition and adoption is of the same force as if done by pre-existing power, and relates back to the act done."

It may be proper here to remark that the mode of adjudicating land-claims in New Mexico differs widely from the manner of adjudicating claims of like nature within the State of California.

In the case of California claims, Congress provided a commission of inquiry and a judicial investigation under certain rules and regulations applicable to all claims; whereas in New Mexico Congress provided for the ascertainment and confirmation of these rights of property to the soil by the appointment of a surveyor-general, whose prescribed duty was to ascertain the origin, nature, and extent of claims to land under Spanish and Mexican law and usage, and to report on all such claims as originated under those laws, which report was to be laid before Congress for final action. It would seem on principle and from a parity of reasoning that if Congress, by confirming the reports of commissioners to whom were referred like questions, sanctioned the rules and principles on which they were founded *that* a like doctrine must be applicable to the report of a surveyor-general.

73 In 1857, the report of the surveyor-general *when* claim number fourteen was transmitted to Congress. It is full and complete, giving all the proceedings and evidence pertaining to the origin, nature, and extent of the claim. The petition of the claimant is embraced in the report, and among other things contains the statement "that he cannot show the quantity of land claimed by him only so far as set forth in the foregoing description of points and bounds. Nor can he furnish a plat or survey of the same, as no survey has ever been made." The description given in the petition is the same as that heretofore set forth.

There was then no pretence, either before the surveyor-general or afterwards before Congress, that the claim was measured and contained a specified number of square leagues; or that the claimant only asked that a certain extent of land within the given boundaries should be confirmed to him. On the contrary, his claim was openly made to the whole of the described tract, whatever its superficial area might be. In Fremont vs. The United States, 17 How., 561, the court say: "The court could not, without doing injustice to individuals, give to the Mexican laws a more narrow and strict construction than they
74 received from the Mexican authorities who were entrusted with their execution."

We have already seen how the Mexican authorities interpreted their laws by the manner in which they invested the claimants with this estate. But conceding that under the Mexican laws the claimants could take but twenty-two square leagues, still it would appear that by virtue of the treaty of cession the United States became seized of the entire tract if the antecedent grant was null and void, and it would seem to follow that they would in such case have the power to grant or withhold, to concede with or without limitations, and they have chosen to do the latter.

It is said, however, that there is nothing in a void estate upon which a confirmation can act, for there is nothing to confirm. This overlooks the distinction to be made between the acts of a sovereign power and an individual. With regard to the former, it has been held that a legislative act, unlike a deed of a private person, may confirm and make valid a void conveyance. Wilkinson vs. Leland, 2 Pet., 627. In Soulard vs. The United States, 4 Pet., 511, when considering the import of the term in a stipulation contained in the treaty by which Louisiana was acquired, providing that the inhabitants of that territory should be
75 protected in the enjoyment of their property, the court say: "It comprehends every species of title, inchoate or complete. It is supposed to embrace those rights which are executory as well as those which are executed. In this respect the relation of the inhabitants to their government is not changed. The new government takes the place of that which has passed away." I think it cannot be questioned that had no treaty of cession taken place the Mexican Congress could have ratified and confirmed the unauthorized act of the governor in making this grant. Is the power of the American Congress, which succeeded the Mexican in the right to dispose of the public lands, any less? The act of confirmation is in law a conveyance by way of quitclaim and release of any interest which the United States may have had in the premises. If A should be in possession of a certain tract of land, defined by certain natural boundaries, and B being the owner thereof, should execute a release-deed to A for the premises, who would be warranted in saying that the deed conveyed less than the whole tract?

It is contended, however, that Congress did not intend to confirm more than twenty-two square leagues of claim No. 14, because of what

76 is said in the report of the Senate committee upon this and other claims mentioned in the act of confirmation. The report of a committee of one house of Congress is no expression of the will of both houses and of the Executive. When no ambiguity or doubt appears in the law, we think the same rule obtains here as in other cases, that the court should confine its attention to the law and not allow extrinsic circumstances to introduce a difficulty when the language is plain. (Cooley's Const'l Limit., 69.) "In expounding this law," says Taney, C. J., in Aldridge vs. Williams, 3 How., 1, "the judgment of the court cannot in any degree be influenced by the construction placed upon it by individual members of Congress in the debate which took place on its passage, nor by motions or reasons assigned by them for supporting or opposing amendments that were offered. The law as it passed is the will of the majority of both houses, and the only mode in which that will is spoken is in the act itself; and we must gather their intention from the language there used, comparing it when any ambiguity exists with the laws upon the same subject, and looking, if necessary, to the public history of the times in which it was passed."

77 Should we, however, overlook this salutary rule, it would appear that the report of the Senate committee, when fully understood, shows that each claim was by the committee separately considered and passed according to its merits by the committee, and subsequently by Congress. Other considerations are urged in favor of a different construction of the act, but we deem it unnecessary to pursue them.

We are of the opinion that the judgment of the court below is correct, and accordingly affirm it.

Mr. Justice Wells did not sit in this case.

(Endorsed:) 160. John G. Tameling vs. United States Freehold Land & Emigration Company. Opinion. Recorded. Filed August 4th, 1874. Jno. W. Webster, clerk.

UNITED STATES OF AMERICA,
Territory of Colorado, ss:

I, John W. Webster, clerk of the supreme court of the Territory of Colorado, do hereby certify that the above and foregoing is a true and complete copy of the opinion of the supreme court of the

78 Territory of Colorado, filed in the above cause, as the same now appears in my office.

In witness whereof I have hereunto subscribed my name and affixed the seal of the supreme court of the Territory of Colorado, at Denver, this twelfth day of September, A. D. 1874.

[SEAL.] JNO. W. WEBSTER,
Clerk of the Supreme Court Territory of Colorado.

Clerk's fees for transcript of record: 116 folios, @ 20, $23.20; copy of opinion, 33 folios, @ 20, 6.60; certificate & seal, 1.00—total $30.80.

Received payment of plaintiff in error.

JNO. W. WEBSTER,
Clerk Supreme Court.

(Indorsement on cover:) No. 269. John G. Tameling, plaintiff in error, vs. The United States Freehold and Emigration Company. Colorado Terr'y sup. ct. Filed 28th September, 1874.

Supreme Court of the United States.

JOHN G. TAMELING, Plaintiff in error,

vs.

THE U. S. FREEHOLD AND EMIGRATION COMPANY, Defendant in Error.

No. 269, Oct., 1875.

WRIT OF ERROR TO THE SUPREME COURT OF THE TERRITORY OF COLORADO.

STATEMENT OF THE CASE.

This is a writ of error brought to reverse the judgment of the Supreme Court of the Territory of Colorado in an action of ejectment.

The action was originally brought in the District Court of the county of Costilla, on the 7th day of July, 1873, by The United States Freehold and Emigration Company, as plaintiff, against John G. Tameling, as defendant, to recover one hundred and sixty acres of land, situated in that county and lying on the south bank of the southern branch of the Culebra river. The declaration alleges that the plaintiff being in possession of the said land on the 1st day of July, 1872, the defendant afterward, to wit, on the 1st day of May, 1873, entered into the premises, and unlawfully withholds the possession thereof from the plaintiff, who claims title to the premises in fee. On the same day the defendant pleaded "not guilty," and issue was joined. (Printed Record, pp. 2, 3.) Also, on the same day, a

stipulation was filed by the counsel of the respective parties, by which it was "agreed by and between the parties to the suit that the venue in said cause should be changed from the District Court for the county of Costilla, to the District Court for the county of Pueblo, in said Territory, there to be tried by the court, without the intervention of the jury, upon an agreed statement of facts. (Ib., p. 2.)

On the 1st of November, 1873, an agreed statement of facts was signed by the counsel of the respective parties, and filed in the District Court of Pueblo county. It is set forth in the Printed Record, from p. 4 to 17.

It consists, generally, of an agreement to refer the questions involved to the court, without the intervention of a jury; of certain admissions as to the occupancy and improvement of the premises in dispute by the defendant; of their locality and inclusion within the exterior boundaries of the "Costilla Estate," claimed by the plaintiff below, which contains by estimation about 500,000 acres, which tract is itself only *a part* of a still larger tract called the "Sangre de Christo Grant," and also of certain documents transmitted by the Secretary of the Interior to Congress, consisting of a translation of "the *expediente* in the case of the claim of Louis Lee and Narciso Beaubien; of certain judicial proceedings transferring their title to Charles Beaubien; of the claim of the latter made to the Surveyor General of New Mexico; of the evidence taken before him, and the report of the Surveyor General to Congress under the 8th section of the act of Congress, dated July 22, 1854; (1 Brightly's U. S. Dig., p. 575, § 635–642;) of the fact of the confirmation of *said grant* by the act of Congress, entitled "An act to confirm certain private land claims in the Territory of New Mexico," approved June 21, 1860, (Stat. at Large, vol. 12, p. 71–72,) as claim "No. 4," but by mistake called claim "No 14" in the agreed statement of facts; (see Printed Record, p. 5;) and, finally, of a deraignment of the title of the said Charles Beaubien to the plaintiff below, with an admission

that they have not conveyed their title to the defendant below; and also of the further admission that he does not hold *under* their title, but *contrary* thereto.

The agreed statement of facts concludes with this stipulation:

"If the facts aforesaid, *under the law*, show that the plaintiff is entitled to the *possession* of the land described i claration in this case, then the finding of the cou for the plaintiff; if the said ~~party~~ under the law the plaintiff is *not entitled to said possession*, then the the court shall be for the defendant; and upon the finding of the court the proper judgment in ejectment for the plaintiff or the defendant, as the case may be, shall be entered of record in said court." (Printed Record, p. 16.)

Under this submission and agreed statement of facts the case was subsequently tried in the District Court of Pueblo county at the December term, 1873, and on the 27th of December, 1873, after argument, the court found the issue for the plaintiff substantially in the words of the declaration, and rendered judgment accordingly against the defendant for the possession of the land in question, with costs of suit. (Ib., p. 17.)

From that judgment the defendant appealed to the Supreme Court of the Territory of Colorado, and assigned two errors:

"First. The District Court erred in rendering judgment for the plaintiff on the agreed statement of facts filed in this case (which was all the evidence in the case) in this: that under the colonization act of Mexico, in force at the time the Sangre de Christo grant was created, no grant could legally be made in excess of twenty-two leagues to the grantees, it being conceded by said agreed statement of facts that the Costilla estate alone, which is a *part* and parcel of said Sangre de Christo grant, *contains alone*, by estimate, 500,000 acres of land or thereabouts, which is five times as much land as could begally be granted to two parties."

"Second. Because the District Court erred in construing the confirmation by Congress to ratify the original grant to a greater extent than that for which, under the

stipulation was filed by the counsel of the respective parties, by which it was "agreed by and between the parties to the suit that the venue in said cause should be changed from the District Court for the county of Costilla, to the District Court for the county of Pueblo, in said Territory, there to be tried by the court, without the intervention of the jury, upon an agreed statement of facts. (Ib., p. 2.)

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that they have not conveyed their title to the defendant below; and also of the further admission that he does not hold *under* their title, but *contrary* thereto.

The agreed statement of facts concludes with this stipulation:

"If the facts aforesaid, *under the law*, show that the plaintiff is entitled to the *possession* of the land described in the declaration in this case, then the finding of the court shall be for the plaintiff; if the said ~~party~~ under the law show that the plaintiff is *not entitled to said possession*, then the finding of the court shall be for the defendant; and upon the finding of the court the proper judgment in ejectment for the plaintiff or the defendant, as the case may be, shall be entered of record in said court." (Printed Record, p. 16.)

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"Second. Because the District Court erred in construing the confirmation by Congress to ratify the original grant to a greater extent than that for which, under the

colonization act of Mexico of A. D. 1824, it could have been originally created." (Printed Record, p. 19.)

After argument in the Supreme Court of Colorado, the judgment of the District Court of Pueblo county was affirmed on the 10th day of July, 1874, and on the 20th day of August, 1874, the original defendant, John G. Tameling, sued out this writ of error to this court, and filed it herein on the 28th day of September, 1874. (Ib., p. 22, and title page.)

The opinion of that court, as delivered by Judge Belford, will be found in the Printed Record, p. 25 to 30.

It will be observed that, under the submission to the court and the agreed statement of facts in this case, the main question involved is, whether or not the first section of the act of June 21, 1860, confirmed claim No. 4 (popularly known as the "Sangre de Christo Grant") to the extent of the exterior boundaries of that claim, including at least one million acres of land.

The subdivision of it, known as the "Costilla Estate," it is agreed, includes, "by estimation, five hundred thousand acres or thereabouts." (Printed Record, p. 4.) The remainder of it, lying within the exterior boundaries of the whole claim, and known as the "Trenchera Estate," includes, by inspection of the map furnished by the General Land Office, quite as much more. It is also a fact that both the claimants of these subdivisions are now before the General Land Office asking for patents according to their respective claims, and the action of that office is now suspended, awaiting the decree of this court in this case.

The particular question presented in this case is subordinate and dependent on a more general question. If the confirmation included *all* the land lying within the exterior boundaries of that claim, then the specific judgments of the courts of Colorado, in favor of the defendant in error in this case, for the one hundred and sixty acres of land claimed and occupied by the plaintiff in error, are correct. But if, on the contrary, it *did not*, then they are erroneous, because, if that confirmation was for *any* quan-

tity *less than the whole quantity claimed* (that less quantity not having been segregated from the mass of the land lying within those exterior boundaries) the courts below could not say, nor can this court say, that the defendant in error, who represents and claims only a part of the larger tract, is entitled under the submission to a judgment for the possession of the *specific* 160 acres described in the declaration, now in the possession of the plaintiff in error. It will be sufficient, therefore, to show that the confirmation of the so-called Sangre de Christo grant did not include all the land included in the alleged exterior boundaries, to entitle the plaintiff in error to a reversal of the judgment.

The solution of the whole question turns on the *construction* to be given to the language of the first section of the act of June 21, 1860, so far as relates to that claim.

That section provides as follows:

"*Be it enacted, &c.*, That the private land claims in the Territory of New Mexico, *as recommended for confirmation by the Surveyor General of that Territory, and* (in his letter to the Commissioner of the General Land Office of the 12th of January, 1858,) *designated* as numbers 1, 3, 4, 6, 8, 9, 10, 12, 14, 15, 16, 17, and 18, and the claim of E. W. Eaton, not on the *corrected list* of numbers, but standing on the original docket and abstract returns of the Surveyor General as No. 16, *be, and they are hereby*, CONFIRMED: *Provided*, That the claim No. 9, in the name of John Scolley and others, shall *not* be confirmed for more than *five square leagues;* and that the claim No. 17, in the name of Cornelio Vigil and Ceran St. Vrain, shall *not* be confirmed for more than eleven square leagues to each of said claimants." (12 Stats. at Large, p. 71.)

The letter referred to adopted a new system of *numbering*, and *changed* the number of the claim in the name of Charles Beaubien (Sangre de Christo) from No. 14 to No. 4, "on the corrected list." (See Report No. 321, Reports of Com'r, House of Reps., 1st sess. 36th Cong., vol. 2, 1859–'60, p. 324–326.)

This fact was overlooked by the counsel who drew up

the agreed statement of facts; but as the *identity* of the claim intended is clearly established by the *name of the claimant*, this error in its number is immaterial in the consideration of the main question.

Assignment of Errors.

The judgment of the Supreme Court of Colorado must be reversed for the following reasons, viz:

1. Because the design of Congress in passing the act of June 21, 1860, was *not to make new grants*, but only to discharge the treaty obligations of the United States with Mexico, by *confirming* the previous legal or equitable rights of Mexican citizens to land in the Territory of New Mexico.

2. Because, under the colonization laws of Mexico existing at the time when the so-called "Sangre de Christo Grant" was asked for, and under which it purports to have been made, no valid colonization grant could be made by the provincial authorities of New Mexico for a greater quantity of land than twenty-two square leagues to the two joint petitioners for the grant.

3. Because the words of the first section of the confirmatory act of June 21, 1860, and the recommendation of the Surveyor General of New Mexico referred to therein, apply only to "the petition" of the original petitioners and to the "grant" made thereon; and not, as has been illegally assumed, to "the claim" or petition of the claimant, Charles Beaubien, their assignee, who, as such, could legally claim only in their right and according to their equities.

4. Because if there is any doubt or ambiguity in the language used in the act of confirmation, that doubt or ambiguity may be rationally and equitably construed by this court according to the facts of the case, all of which tend to show the clear intention of Congress, *not to exceed in any case*, in its confirmation of land titles in New Mexico, the maximum quantity of land grantable under the colonization law of 1824.

5. Because, according to these principles, as we have seen, the confirmee of the Sangre de Christo grant (under whom the defendant in error claims) was not entitled to more than two square leagues according to the original title papers; or, according to the most liberal construction and the analogy in the case of Cornelio Vigil and Ceran St. Vrain, in a parallel case under the same law, to more than twenty-two square leagues; and, also, because in either case, inasmuch as the said quantity of land has not been segregated from the rest of the land within the exterior boundaries of said claim, this court cannot find, as is required by the terms of the submission, that the defendant in error is entitled to the possession of the specific land now in the possession and occupancy of the plaintiff in error: and, therefore, the judgment of the Supreme Court of Colorado in this case must be reversed and judgment be entered for the plaintiff in error, according to the terms of the stipulation filed in the case.

Argument.

First error.

The judgment must be reversed: Because the design of Congress in passing the act of June 21, 1860, was *not to make new grants*, but only to discharge the treaty obligations of the United States with Mexico, *by confirming* the previous *legal* or *equitable rights* of Mexican citizens to lands in the territory of New Mexico.

1. This fact is shown by the provisions of the treaty of Guadalupe Hidalgo. The 8th and 9th articles of that treaty provide as follows, viz:

"Article VIII. Mexicans now established in territories previously belonging to Mexico, and which remain for the future within the limits of the United States as defined by the present treaty, shall be free to continue where they now reside, or to remove at any time to the Mexican republic, *retaining the property which they possess in the said territories*, or disposing thereof, and removing the proceeds wherever

they please, without their being subjected on this account to any contribution tax or charge whatever. * * * *

"In the said territories, *property of every kind now belonging to Mexicans not established there, shall be inviolably respected.* The *present owners, the heirs of these* and *all Mexicans* who may hereafter acquire said property by contract, shall enjoy with respect to it guarantees equally ample as if the same belonged to citizens of the United States."

"Article IX. Mexicans who, in the territory aforesaid, shall not preserve the character of citizens of the Mexican republic, conformably with what is stipulated in the preceeding article, shall be incorporated into the Union of the United States, and be admitted at the proper time (to be judged of by the Congress of the United States) to the enjoyment of all the rights of citizens of the United States according to the principles of the Constitution; and in the meantime *shall be maintained and protected in the free enjoyment of their liberty and property*, and secured in the free exercise of their religion without restriction." (9 U. S. Stat. at Large, pp. 929–930.)

2. It is also shown by the 8th section of the act of July 22, 1854, passed as one of the preliminary steps to the fulfillment of the obligations of that treaty. That section provides as follows:

"It shall be the duty of the Surveyor General of New Mexico, under such instructions as may be given by the Secretary of the Interior, to ascertain—(1,) the origin; (2,) nature; (3,) character; and, (4,) EXTENT of *all claims to lands under the laws, usages, and customs of Spain and Mexico*, and for this purpose may issue notices, summon witnesses, administer oaths, and do and perform all other necessary acts in the premises. He shall make a FULL REPORT on all such claims as originated before the cession of the territory to the United States by the treaty of Guadalupe Hidalgo, *denoting the various grades of title*, with his decision as to the validity or invalidity of each of the same *under the laws, usages, and customs of the country before its cession to the United States;* and shall also make a report in regard to all pueblos existing in the territory, showing the *extent* and *locality* of each, stating the number of inhabitants in the said pueblos respectively, and the nature of their titles to the land; such report to be made according to the form which may be prescribed by the Secretary of the Interior.

Which report shall be laid before Congress for *such action thereon* as may be deemed just and proper, *with a view to* CONFIRM *bona fide* GRANTS *and give full effect to the treaty of* 1848 *between the United States and Mexico;* and, until the final action of Congress on such claims, *all lands covered thereby shall be reserved from sale or other disposal by the Government,* and shall *not* be *subject to the* DONATIONS granted by the previous provisions of this act." (10 Stat. at Large, p. 308; 1 Brightley's Dig U. S. Laws, § 642, p. 576.)

3. This fact is also finally declared *in express terms* by the title of the act of June 21, 1860, which is entitled, "An act to *confirm* certain private land claims in the Territory of New Mexico." (Stat. at Large, pp. 71–72.) The fact that it was not the design or intention of Congress in that act to make new grants, but only to confirm pre-existing legal and equitable rights to lands in New Mexico under the laws of Mexico, is also shown by the provision of the fourth section of that act, by which it is enacted "that the *foregoing confirmations* shall only be construed as *quit-claims* or relinquishments on the part of the United States, and shall not affect the adverse rights of any other person or persons whomsoever." It *creates no new rights,* but only *confirms* antecedent rights.

This fact is therefore so clear and fundamental as to be beyond dispute; and it may therefore be assumed as the basis of the argument in this case.

Second Error.

The judgment must be reversed, because, under the colonization laws of Mexico existing at the time when the so-called Sangre de Christo grant was asked for, and under which it purports to have been made, no valid colonization grant could be made by the provincial authorities of New Mexico for a greater quantity of land than twenty-two square leagues to the two joint petitioners for the grant.

The petition of Luis Lee and Narciso Beaubien for the grant in question is dated December 23, 1843, and the con-

cession or rather order of the Governor to the prefect is dated December 30, 1843. (Printed Record, pp. 6–7.) They were made, therefore, after the establishment of the organic basis of June 13, 1843, which was supposed to enlarge the authority of the Governor of New Mexico in making colonization grants in that Territory.

In the case of the United States *v.* Vigil (13 Wall., U. S. R., p. 449) this subject was critically examined and very fully considered by this court. That was a case in which an action was authorized to be brought by the 5th section of this same act of June 21, 1860. A claim was made in that case for two million and a half acres of land in New Mexico, under a grant made and supposed to have been authorized by the usages and customs of Spain and by the extraordinary authority claimed to have been conferred by the organic basis of June 13, 1843. In disposing of that claim the court says:

"It has been repeatedly decided by this court that the only laws in force in the Territory of New Mexico for the disposition of the public lands (with the exception of those relating to the missions and towns) are the act of the Mexican congress of 1824 and the regulations of 1828." (Ib., p. 451.) * * * "The decrees of the courts of Spain are invoked as an authority for this grant, but it is sufficient to say that they were invoked for a similar purpose in Vallejo's case, (1 Black, 541,) and were decided to be inapplicable to the state of things existing in Mexico after the revolution of 1820. And the organic bases of the Mexican republic of June 13, 1843, are equally ineffectual to support this grant. If it be conceded the powers of the Departmental Assembly were enlarged by these decrees, so far as the private property belonging to the department as *a municipal organization* is concerned, yet they effected no change in the mode of disposing of the *public lands, nor was the colonization policy of* 1824 *at all altered by them*, for they expressly declare that 'in alienations of land the existing laws will be observed and *what the colonization laws determine.*'"

"In any aspect of this case the claim for this large tract of land has no foundation to rest upon. The Departmental Assembly, aided in a certain sense by the Governor,

usurped the prerogative of the Supreme Government, and no ingenuity of reason can sanction a proceeding which was not only without authority of law, but contrary to the forms prescribed by it. Judgment reversed, and the cause remanded to the court below, with directions to enter a decree dismissing the petition." (Ib., pp. 452, 453; Opinion delivered by Mr. Justice Davis.)

If the Sangre de Christo grant stood precisely on the same basis as the Vigil case it would be ruled by it, and we should not be obliged to go further. In the Vigil case the only test of its validity *was the law of Mexico.* When tried by that law it was found to be illegal and void, among other reasons, for excess of quantity beyond that authorized by the colonization law of 1824 and the regulations of 1828. When tried in the same way, the so-called "Sangre de Christo Grant" might be shown to be utterly void for any quantity of land whatever, for the same and for other reasons equally good. But in this case another element enters. The claim made is for at least one million of acres of land under and by virtue of a colonization grant alleged to have been made by the Governor of New Mexico, in pursuance of the authority conferred upon him by the colonization law of 1824 and the regulations of 1828. Such a grant, if made, would be void, like the grant in the Vigil case. But it is further alleged that it has been *confirmed* for that quantity of land by the first section of the act of June 21, 1860, entitled "An act to *confirm* certain private land claims in the Territory of New Mexico." The new element in the case of the Sangre de Christo grant (which did not exist in the Vigil case) is the act of our Congress *confirming* that grant. It will not be denied that our Congress *could* have *made a grant* for one million of acres of land under such circumstances; that is to say, while the maximum quantity to which the two petitioners in this case could be entitled under the law of Mexico, and to which they or their assignees had a right to a *confirmation* under the treaty of Guadalupe Hidalgo, was only twenty-two square leagues, (or less than 100,000 acres,) it will not

be denied that our Congress, if it had so chosen, could have redeemed its treaty obligations in the case of the Sangre de Christo grant by making a new grant; and under the form of a *confirmation only*, it could have given the claimant more than ten times as much land as he was entitled to by the law of Mexico. Nor will it be denied that Congress, while studiously limiting its confirmations in *other* cases of like kind by the maximum quantity grantable under the Mexican law, *could* have made *an exception* in favor of the Sangre de Christo grant for good reasons, or for no other reason than its own good will and pleasure. But the question still remains, whether it *has done* so or *not*. The judgments of the courts of Colorado assert in effect that *it has done so*. We, on the contrary, maintain that *it has not;* and we now proceed to examine the language of the act of Congress confirming that grant.

Third Error.

The judgment must be reversed, because the words of the first section of the confirmatory act of June 21, 1860, and the recommendation of the Surveyor General of New Mexico referred to therein, *apply only to the original "petition" of the original petitioners*, and to the "grant" made thereon, and *not*, as has been illegally assumed, to the "claim" or petition of the claimant, Charles Beaubien, their assignee, who, as such, could legally claim only in their right, and according to their equities.

The language of the first section of the act of June 21, 1860, is briefly this:

"*Be it enacted, &c.*, That the private land claim in the Territory of New Mexico, *as recommended for confirmation by the Surveyor General of that Territory*, and designated in his letter to the Commissioner of the General Land Office of July 12, 1858, on the corrected list of numbers, as No. 4, *be, and it is hereby, confirmed.*"

The only recommendation made by the Surveyor General of New Mexico, in reference to claim No. 4, is that

contained in his decision or report, dated December 30, 1856, and communicated to Congress in connection with all the documents in the case. For convenience of reference in this case, all the documents connected with it, and with all the other claims confirmed by the first section of the act of June 21, 1860, will be found collected in Report No. 321, Reports of Com. of the House of Reps., 1st sess. 36th Cong., vol. 2, 1859–'60. In that report the recommendation of the Surveyor General will be found at page 13 to 15, which is the same contained in the Printed Record of this case, p. 14–15.

As we have already seen, it was the duty of the Surveyor General of New Mexico, under the 8th section of the act of July 22, 1854, to ascertain the *origin*, *nature*, *character*, *and extent of all claims* to land under the laws, usages, and customs of Spain and Mexico; and to make a *full report* on all such claims as originated before the cession of New Mexico to the United States by the treaty of Guadalupe Hidalgo, denoting the various grades of title *with his decision* as to the *validity or invalidity of the same*, which report was to be laid before Congress for such action thereon as might be deemed just and proper with a view to CONFIRM *bona fide* GRANTS, and to give full effect to the treaty of 1848 between the United States and Mexico; and in the meantime and until the final action of Congress on such claims, it was ordered that *all lands covered thereby should be reserved from sale*, and that they should not be subject to the *donations* offered to settlers by that act.

Accordingly, the object of that act being to *confirm grants made*, we find, that the report of the Surveyor General takes the form of a quasi-judicial opinion in the case of "Charles Beaubien, *assignee* of Stephen L. Lee and Narciso Beaubien, deceased, *v.* The United States, for the *Sangre de Christo* GRANT." (Printed Record, p. 14.) It begins by giving a history of the *grant*, and then concludes with these words:

"The *grant* being a positive one, without any subsequent conditions attached, and made by competent authority,

and having been in the possession and occupancy of the grantees and their assigns from the time the *grant* was made; it is the opinion of this office that *the grant is a good and valid one*, and that a legal title vests in Charles Beaubien *to the land embraced within the limits contained in the petition*. The GRANT is therefore approved by this office and transmitted to the proper department with the *recommendation* that *it* be CONFIRMED by the Congress of the United States." (Printed Record, p. 15.)

It will be observed that there is *no report*, much less "a *full* report," in regard to "the extent of the claim," *other* than that which is specified as "the land embraced within the limits contained *in the petition*," and in "the grant." If there were two or more petitions in this case *which petition* was here referred to? Was it the "petition" of the "original petitioners," or was it the "claim" or petition of the "claimant?" This question can only be answered by an examination of the opinion of the Surveyor General. From such an examination it will be found that the words "petition" and "petitioners" are used only in connection with the names of the Luis Lee and Narciso Beaubien, the original "petitioners." Thus he says: "On the 27th day of December, 1843, Luis Lee and Narciso Beaubien *petitioned* Manuel Armijo, civil and military governor of New Mexico *for a grant of land* in what is now the county of Taos, *embracing* the Costilla, Culebra, and Trenchera rivers, including the Rito of the Indians, and Sangre de Christo to its junction with the Del Norte river." THIS PETITION was referred, on the 30th day of December, 1843, by Manuel Armijo, the civil and military governor above-mentioned, to the prefect with instructions to give the possession asked for *by the petitioners*, in case there was no impediment.

"On the 7th of January, 1844, Juan Andres Archuleta, the prefect, directed the justice of the peace of the demarcation wherein the land was situated, *to place the parties in possession* IN ACCORDANCE WITH THE DECREE OF THE CIVIL AND MILITARY GOVERNOR, by virtue of which the justice of

the peace, José Miguel Sanchez, placed the parties in possession of *the land, with the boundaries contained in the* PETITION," &c. (Printed Record, p. 14.)

What "petition" is here referred to?

It is obvious from the *context* that the petition referred to is the *original petition* of Luis Lee and Narciso Beaubien, and none other; or, if any other is referred to, it must be regarded simply as a copy, and as coextensive with their original petition and the grant thereon—neither more nor less.

Charles Beaubien, on the contrary, we find, asserted *a claim*. He presented *no "petition."* In the document presented by him he calls himself "a claimant," and he concludes his claim to the Surveyor General in these words:

"The *claimant*, therefore, respectfully asks a speedy acknowledgment of *his claim*." (Printed Record, p. 12.)

Accordingly, when he is spoken of in the report of the Surveyor General he is called "the present claimant," and he is *thereby distinguished* from the original petitioners. Thus he says:

"Narciso Beaubien, one of the grantees, was killed at the massacre of Taos, in the year 1847, and, dying without issue, his father, Charles Beaubien, *the present claimant*, became his heir," &c. * * * "It is also proven that Stephen L. Lee and Luis Lee, as [the name is] signed *in the original petition*, were one and the same individual, and that Narciso Beaubien, the son of Charles Beaubien, *the present claimant*, died without issue." (Printed Record, p. 15.)

"The petition" of Charles Beaubien is nowhere spoken of in the report, except so far as "his claim" may be regarded inferentially as "a petition," from the use of the words "the *original* petition." In strict conformity with the distinction thus made between "petition" and "claim," and treating Charles Beaubien as only the *assignee* of the original *petitioners for the grant*, the Surveyor General says:

"It is the opinion of this office that *the grant* is a good

and valid one, and that a legal title vests in Charles Beaubien to the land embraced within the limits contained in the *petition*. *The grant* is, *therefore*, approved by this office and transmitted to the proper department, with the *recommendation* that IT (the grant) be confirmed by the Congress of the United States."

The two expressions used in different parts of the report, "the land with the boundaries contained in the petition," and, "the land embraced within the limits contained in the petition," are almost identical. If the petition referred to in the first phrase meant the petition of the original petitioners, as we have already seen reason to believe, then, it is equally clear that it must have the same meaning in the second phrase, and for the same reasons; or, if there were two or more petitions then they were regarded as having the same extent, and both were limited by the *grant made*. This conclusion is evident also from the *logic* of the opinion itself. The quantity of land *granted*, and the quantity of land originally *petitioned for*, are considered to be one and the same. This was necessarily so in this case, because the land *petitioned for* was *granted* by the governor *in the words of the petition*, without any limitation or restriction of the terms of the petition. The *petition* necessarily preceded the *grant;* therefore the petition referred to must be *the original petition* or if a subsequent one, it was regarded as being *identically of the same* extent, in which case it would be immaterial which was referred to.

But whether "the petition" referred to by the Surveyor General was that of Luis Lee and Narciso Beaubien or "the claim" of Charles Beaubien, or whether the law or the logic of his opinion was good or bad, the only thing with which we are concerned under the facts of this case, is, *the conclusion* at which he arrived, which is thus expressed:

"The *grant* is therefore approved by this office and transmitted to the proper department, with the *recommendation* that *it* [the grant] be *confirmed* by the Congress of the United States."

Thus, it appears, that the thing "approved" is "the grant," *not* "the claim." The thing "recommended" for "confirmation" is "the grant," *not* "the claim." And "the grant" is the thing which is "confirmed" by the first section of the act of June 21, 1860, and *not* "the claim," except so far as it *agrees* or is *coincident* with "the grant," because that act confirms "the claim" "as *recommended* for confirmation by the Surveyor General of New Mexico."

If, therefore, there is any difference between the *extent* of "*the claim*," as made by Charles Beaubien, and the extent of "the grant," as made by the Governor of New Mexico, then it is clear that, under the words of the act of Congress confirming the claim "as recommended for confirmation by the Surveyor General of New Mexico," "the grant" as made by the Governor must prevail over "the claim" as made by the assignee of "the grant." "The claim" was confirmed only so far as it was warranted by "the grant." "The grant," therefore, is the *standard* by which to measure the extent of "the claim" confirmed.

This leads us to a consideration of the so-called "Sangre de Christo *Grant*." As we have already seen, the colonization law of 1824 and the regulations of 1828 were the only laws existing at the time when the so-called "Sangre de Christo Grant" was asked for. We have also seen that under them, no valid colonization grant could be made by the authorities of New Mexico for a greater quantity of land than twenty-two leagues to the two joint petitioners; that is to say, a maximum quantity of eleven leagues to each petitioner.

Accordingly, we find that, on the 30th of December, 1843, Luis Lee and Narciso Beaubien, under that law, presented their *petition* to the Governor of New Mexico, representing that they were citizens, residents of Taos, &c.; "and state (1) that, desiring to encourage the agriculture of the country and place it in a flourishing condition, and being restricted with [in?] lands wherewith to accomplish said purpose; (2) we have seen and examined with

great care *that* embraced within the Costilla, Culebra, and Trenchera rivers, including the Rito of the Indians, and the Sangre de Christo to its junction with the Del Norte river; and (3) finding in it the qualities of fruitfulness, fertile lands for cultivation, and abundance of pasture and water, and all that is required for its settlement and *the raising of horned and woolen cattle*, ['y crias de ganados mayor y lanar;'] and (4) being satisfied with it, and knowing that it is public land: (5) we have not hesitated to apply to your Excellency, praying you, as an act of justice, *to grant to us the possession* of *a tract of land*, to each one, WITHIN *the aforementioned boundaries*, promising to commence the settlement of the same within the time prescribed by law, until *the colony* shall be established and permanently fixed, *provided* your Excellency be pleased to grant it to us. *Such is the offer we make*, and swear it is not done in malice." (Printed Record, p. 6.)

On the margin of the petition the Governor made this indorsement:

"Santa Fe, December 30, 1843. Referred to the prefect in order that, if the land petitioned for be not otherwise disposed of, *he cause the possession* referred to by the petitioners *to be given*." (Printed Record, p. 7.)

This was all of the grant, and the only grant ever made in the case. We will examine it first, according to *the translation* of the original documents as given in the record; and afterwards, according to a more *correct* translation of the original Spanish documents transmitted to Congress along with the claim, and which were before Congress when the grant was confirmed.

1. *According to the translation in the record.* It will be observed that the petitioners do not ask for a *grant of the whole region of country described in their petition*, including about a million of acres of land, that is to say, more than twenty maximum grants of eleven leagues each. On the contrary, their petition was simply "to grant to us *the possession of a tract of land*, to each one, WITHIN the afore-

mentioned boundaries;" and the so-called grant was made accordingly. It is simply the case of a petition under the colonization law for the grant of the *possession* of an *indefinite quantity* of land, *within definite out-boundaries*. If any grant was made at all, it must have been made *according to the petition*. If any grant was made at all, it must have been made *according to the authority of the Governor to grant*, and that, as we have already seen, could *not exceed* twenty-two leagues, that is, a grant of eleven leagues to each petitioner. The grant, therefore, was either *void for uncertainty*, or it was valid only to the extent of the maximum authority of the Governor to grant. But under the act of confirmation it cannot be treated as void, because it has been *confirmed* by Congress for some estate and for some quantity of land.

In considering the case, it is not to be overlooked that the petition was not for a grant of *the land itself*, but only for a grant of "the *possession*" of the land. But treating the case most liberally, and regarding "*that* as *certain* which is capable of being made certain," it follows that the grant confirmed, *in its widest latitude*, cannot possibly exceed the maximum quantity of land grantable to the petitioners under the colonization law of 1824, viz: twenty-two leagues, as has been repeatedly decided by this court.

2. *According to a more correct translation of the original Spanish documents.* These documents will be found in Report No. 321 of the Reports of Committees of the House of Representatives, 1st Sess., 36th Cong., vol. 2, 1859–60, p. 15, where they are found following the opinion of the Surveyor General of New Mexico, and forming part of the documents in the case in view of which Congress acted.

It will not be necessary to quote the preamble of the petition in the original Spanish. Accepting the translation of it before given as sufficiently accurate, it will only be necessary to quote the prayer of the petition, and afterwards the order of the Governor made thereon. We place them and their translations in parallel columns, in order

that the court may be able to see and to judge of the *correctness* of the translations given.

After stating in the preamble that the object of the petition, was, among other things, to obtain the *possession* of land for *raising cattle and sheep*, ("y crias ganados mayor y lanar,") the petitioners pray:

SPANISH.

No hemos vacilado para ocurir á V. E. suplicando le de sirva por un efecto de justicia, CONCEDERNOS, EN el referido terreno *la posesion* de UN CITIO *de tierras a cada uno*, protestando que dentro del termino de la ley, daremos principio á establecernos en ella hasta quedar radicados y establecida *la colonia*, siempre que V. E. de dig ne concedernosla. Asi lo ofrecemos y juramos no ser de malicia.

Santa Fé, Decembre 27 de 1843.
Entre reglones vale.
LUIS LEE,
NARCISO BEAUBIEN,

SANTA FÉ, *Decembre* 30, 1843.
Pase al Prefecto para que, si el terreno que de solicita no tiene embaraso haya *que se dé la posesion á que de refieren* los presentantes.
ARMIJO.
DONACIANO VIGIL,
So. Into.

ENGLISH.

We have not hesitated to apply to your excellency, praying you, as an act of justice, to grant to us, WITHIN the land referred to, *the possession of one sitio (one square league of land) to each one*, promising within the limit of the law to begin to establish ourselves on it until we shall be rooted (permanently fixed) and the *colony* established, provided that your excellency sees proper to grant it to us. Such is the offer we make, and we swear that it is not done in malice.
Santa Fé, December 27, 1843.
What is between the lines is valid.
LUIS LEE,
NARCISO BEAUBIEN.

SANTA FÉ, *December* 30, 1843.
Let it pass to the prefect, in order that, if the land which is solicited is not otherwise embarrassed, *the possession may be given to which the presenters (petitioners) refer.*
ARMIJO.
DONACIANO VIGIL,
Acting Secretary.

The area of a "sitio de ganado mayor" is well known to this court; but it is thus defined by Galvan in his "Ord. de Tierras y Aguas," p. 125:

SPANISH.

"La area ó superficies *de un sitio de ganado mayor* es veinte cinco millones de varas cuadradas, que resultan de cuadrar el numero de varas que tiene uno de sus lados, esto es, de multiplicar el numero 5,000 varas por si mismo."

ENGLISH.

"The area or superficies of a sitio for larger cattle (a square league of land) is twenty-five thousand square varas, which result from squaring the number of varas which one of its sides contains; that is, from multiplying the number 5,000 varas by itself."

The translation made for the use of the Surveyor General was evidently made by one who was *not a Spanish lawyer*, and consequently it was made by one who was not acquainted with the *technical* and *definite meaning* of the phrase in the Mexican colonization law of 1824: "un citio (sitio) de ganado mayor." It was briefly called "un citio de tierras" in the petition, because the phrase "y crias de ganados mayor y lanar" ("and for raising the larger *cattle* and *sheep*") had just been used in the preceding part of the sentence. The translator, therefore, translated it *indefinitely* as "a tract of land," and out of this *mis*-translation has arisen much, if not all, of the misconception in the case. The only effect, however, of a correct translation is to render the petition legal and to *reduce* the quantity of land asked for, on the one side, and granted, on the other. The petitioners, instead of asking illegally and *indefinitely* for the grant of the possession of A TRACT of land, to each one of the petitioners, WITHIN larger exterior boundaries, or for a grant of all the land defined by those exterior boundaries, they, in truth and in reality, asked for the grant of the possession of a *definite* and legal quantity of land to each of them, viz: one league each; and *it was granted to them*—neither more nor less. *Two leagues of land within* the exterior boundaries of the region named was the whole quantity of land asked for, and consequently only two leagues of land were granted by the Governor—neither more nor less. That was the quantity, and no more, of which he directed the possession to be given by the prefect to the petitioners. The prefect directed the same granted quantity to be delivered, and no more. If this be so, (and unless the translation given is totally incorrect there can be no escape from the fact) then, it matters not *in point of law* whether the petitioners mistakenly, ignorantly, or fraudulently supposed or represented themselves to the justice of the peace as having obtained *a grant of that whole region of country*, and that he *as* mistakenly, ignorantly, or fraudulently went through the form of delivering to them juridical possession of that whole

region of country. In either case, the act was null and void; and in this view it matters not whether the grant was for two leagues or for *twenty*-two leagues; his act was equally null and void. *He had no granting power.* His authority was limited and defined by the grant made by the Governor. His duty, as defined by the prefect, the law, and the grant, was simply to go upon the ground with the grantees, and *there to segregate the land granted* from the surplus contained within the out-boundaries of the petition, by *measuring*, marking, and delivering to the grantees possession of two leagues of land (the quantity of land granted) in the locality where it might be selected by them, anywhere within the out-boundaries named. But this he utterly failed to do, and consequently his act was void, it having been done, not only *without* authority, but *contrary* to the specific duty assigned to him.

The nullity of that proceeding is also unredeemed by any subsequent ratification or recognition of it from any authoritative source. The justice of the peace made no report of his action to the Governor. The Governor never presented it for ratification to the Departmental Assembly, and the boundaries of the grant, as defined by the so-called act of juridical possession, were never sanctioned by it or by the Governor. He never issued to the grantees a *titulo* for the land included within the said boundaries. That proceeding must therefore be regarded as null and void.

The whole claim depends upon the grant actually made; upon the authority of the Governor to make it; and especially, under the act of Congress, upon the "recommendation" of the Surveyor General, to confirm the "grant," and not the "claim" made under it, except so far as it was authorized by "the grant;" and that, as we have already seen, when correctly translated, authorized a claim for only two square leagues, or, at most, under the mis-translation and the most liberal construction, a claim for twenty-two square leagues—the maximum quantity grantable to two joint petitioners under the colonization law of Mexico.

Fourth Error.

The judgment must be reversed, because if there is any doubt or ambiguity in the language used in the act of confirmation, that doubt or ambiguity may be rationally and equitably construed by this court, according to the facts of the case, all of which tend to show *the clear intention of Congress not to exceed in any case*, in its confirmation of land titles in New Mexico, the maximum quantity of land grantable under the colonization law of 1824.

This canon of interpretation and construction is so universally received that it will be sufficient to refer to but few authorities.

When the meaning of a statute is *ambiguous*, it may be construed by the judiciary so as to effect the *intention* of the legislature. Sedgwick on the Construction of Stat. and Const. Law, 2d ed., 1874, p. 325 and note; p. 326 and note; pp. 328, 226, 266, 359.

Statutes may be construed *against their letter*, in order to effectuate their *intention*. Ib., p. 255 and note, p. 256, &c. See also Smith's Commentaries on Stat. and Const. Construction, edition of 1848, §§ 448, 523, 515, 516, 532, 697, 702, 704. It is also sanctioned by numerous decisions of this court, which it is not necessary to cite in detail. It is well settled law that in cases of ambiguity, the intention of the legislature, like the intention of the testator in the case of a will, furnishes the paramount rule to guide in the interpretation and construction of statutes.

Now, the facts which may be resorted to for aid in rationally and equitably construing the act of Congress in this case according to its intention, on the hypothesis of doubt or ambiguity in its meaning, are: 1st. The treaty obligations of the United States with Mexico. 2d. The colonization laws of Mexico. 3d. The equities or rather the want of equities arising on the original title papers and the evidence in the case of the Sangre de Christo grant. 4th. The historical facts and circumstances resulting in the enactment of the confirmatory act of June 26, 1860, and

the context and limitations of that law, in like cases, *where the claims made were understood to exceed* the ordinary limitations of the colonization law of 1824 and the regulations of 1828.

1st. and 2d. The first and second facts have already been considered under the first and second errors. It will be sufficient to refer to them in this connection.

3d. The equities or rather the want of equities arising on the original title papers and the evidence, in the case of the Sangre de Christo grant, have already been partially considered. But there are others which it will be proper to notice here.

All the proceedings in connection with the so-called grant are irregular, and in violation of the regulations of 1828. A copy of those regulations, for convenient reference, will be found in the report of the case of *Hornsby* v. *The United States*, 10 Wall. U. S. R., p. 231–2. By comparing the expediente in the case of the Sangre de Christo grant with those regulations, it will be found to be defective, not only in matter of *form*, but in matter of *substance*, and that *its irregularities* are the *producing causes of all the difficulties in the case.*

1. The petition was made in violation of regulation No. 2. It did not set out, as that regulation required, "the profession, the number, description, religion, and other circumstances of the families or persons with whom they wished to colonize;" nor did it "describe *as distinctly as possible, by means of a map, the land asked for.*" If it had been the intention of the petitioners to ask for a grant of the whole region of country now claimed under the grant, the accompanying map would have defined its boundaries to the eye, have arrested attention, and it would have been likely to prevent all misunderstanding on the subject. The absence of the diseño or map has in many cases been held by this court to be a fatal defect.

2. No reference was made by the Governor to the local authorities for information as to the qualifications of the petitioners under the colonization law, and as to the pro-

priety of making the grant, as is required by the 3d regulation. If this regulation had been observed, no concession could legally have been made, as the petitioners were wholly unqualified under the law. Their object, in the grandiloquent phrase of the petition, was "to encourage the agriculture of the country and to place it in a flourishing condition." Who were they, and what were their resources for such an enterprise? The resources of Luis Lee are satisfactorily shown by the petition of his administrator, Joseph Pley, to the court, made May 3, 1847, asking for authority to sell Lee's interest in the grant, in order to pay his debts, "there being no other assets," (Printed Record, p. 7,) not even any of "the horned or woolen cattle" spoken of in the petition! (Ib., p. 6.) On the authority granted by the court his whole interest, viz: one-half of the grant, was sold, and conveyed by his administrator, for the magnificent sum of $100, to Charles Beaubien, the father of Narciso Beaubien, the other grantee. And who was this son of his father? A boy about thirteen years old at the date of the grant!! By the record it appears that the grant was made December 30, 1843, and that both the grantees were killed January 19, 1847, at the massacre of Taos. At that time, about three years after the grant, Narciso Beaubien had reached the mature age of sixteen years! (See testimony of Doniciano Vigil and Joab Houghton, (Printed Record, pp. 12–13.) Of course, his agricultural resources were in the same proportion. Thus, it also appears, that these two faithful rancheros, three years after the date of their grant, came to an untimely end, not, as might have been expected, on the fields of Sangre de Christo, where they had gone "to encourage agriculture and place it in a flourishing condition," but in the distant village of Taos, the very same place where they both lived when they asked for the grant three years before. (Printed Record, p. 6.) If they had been, anywhere within the outboundaries of the Sangre de Christo grant, they would certainly have escaped. How unfortunate for them, that they had never gone there to live! But it is a consolation to

know that, like David and Jonathan, "They were lovely in their lives, and that in their deaths they were not divided." It is also an appropriate sequel "in the fitness of things" that Charles Beaubien, who owned an adjoining tract of land, (see act of juridical possession, Printed Record, p. 8; Report No. 321, pp. 97, 252, &c.,) should, by the combined force of being the father of Narciso, of the fortunes of war, and of the payment of $100, become the claimant of that magnificent estate, whose area *he did not know* for want of a survey, ("as no survey had been made,") and which, poor man, he was unable to state in his claim filed with the Surveyor General, otherwise than geographically and by a general reference to rivers and mountains as its boundaries! (Printed Record, p. 11.)

The whole history of the case gives rise to the unpleasant suspicion, that in the beginning it was, in part at least, an attempt on the part of Charles Beaubien, under the name of his minor son, to evade the limitations of the Mexican colonization land-law, and in the end, by a suppression of facts within his knowledge, to obtain a confirmation for a larger grant of land than could legally be granted under the law of Mexico by a provisional governor.

3. The grant was made in the first place, and not *after* the necessary reference or obtainment of information as to the qualifications of the petitioners, as is required by the 4th regulation.

4. The grant was not approved by the Departmental Assembly nor by the Supreme Government, as required by the 5th, 6th, or 7th regulations, accordingly as it may be refused as an individual, or as an empressario grant.

5. No *titulo* was ever issued by the Governor as required by the 8th regulation defining the boundaries of the grant, and no record of the grant was ever made as required by the 9th regulation, so far as the record shows.

6. But, above all, so far as "*equities*" under the colonization law are concerned, there is not a particle of evidence in the record to show that the grantees or their assignees

ever occupied the land granted for a single day, and that was a *sine qua non!*

The claimant, it is true, alleged in his claim as follows:

"The claimant further states that the said Luis Lee and Narciso Beaubien, after having been put in lawful possession of said grant, conformed to all the laws and regulations in regard to the same, as required at that time, and *held possession thereof until January* 19, 1847, when both were slain in the massacre of Taos of that date."

"Claimant is prepared further to prove, if *deemed necessary*, that *since* the said grant came into *his* possession *he* has *had* made extensive settlements on the same, and that it is becoming under his ownership rapidly populated." (Printed Record, pp. 11–12.)

But these statements were not verified by affidavit nor were they proved in any way. The Surveyor General, in his report or decision, says:

"The *testimony* also shows that the land has been *occupied* from the time the grant was made up to the present time." (Printed Record, p. 15.)

Nevertheless, in the testimony accompanying his report and returned by him as that which was taken in the case, there is not a particle of evidence on the subject of the occupancy of the land granted, either by the grantees, or by the claimant, their assignee. It seems *not* to have been "deemed necessary" by the Surveyor General, or that he very accommodatingly took or perhaps mistook the *allegations* for the *proof*.

In short, it may be confidently said that on the original title papers and on the accompanying evidence as it appears in the record, neither the original grantees nor their assignee, the defendant, had any equity which bound the conscience of Mexico or which the United States was bound to respect. It is also perfectly clear that if the claim had been judicially examined in the beginning, as similar claims in California have been examined by this court and its subordinate tribunals, it would undoubtedly have been rejected, as having no equity or reasonable claim

to confirmation for a single square foot of land. It is indebted entirely to the unacquaintance of the Surveyor General of New Mexico with the colonization law of Mexico, for the measure of recognition which he gave it, and to the act of Congress confirming the original "grant" upon his "recommendation." Under such circumstances showing a total want of equity in the claim, it is highly proper, in case of any doubt or ambiguity as to the meaning of the language of the act of confirmation, that it should be construed according to the merits of the individual case, according to its subject-matter, and especially according to the manifest intention of Congress in the passage of the act.

4th. The historical facts and circumstances resulting in the enactment of the confirmatory act of June 21, 1860, and the context and limitations of that law *in like cases, where the claims made were understood to exceed* the ordinary limitations of the colonization law of 1824 and the regulations of 1828, lead us to the same conclusion.

They will all be found—1st, in the Report of the House Committee No. 321, before referred to; 2d, in the corresponding Report of the Senate Committee No. 228; and, 3d, in the law itself.

1st. On the 2d of April, 1860, Mr. Kenyon, from the House Committee on Private Land Claims, made a report, adopting the previous report of Mr. Sandidge, made to the House May 29, 1858, and recommending the passage of the accompanying bill, (H. R., No. 195,) which proposed the creation of a Land Board, consisting of at least three persons, to report upon land claims in the Territory of New Mexico. Mr. Sandidge says:

"The Committee on Private Land Claims, to whom was referred a *large mass of documents* relative to private land claims in the Territory of New Mexico, instruct me to make the following report:

"Those claims, with others since forwarded by the Surveyor General of the Territory, have received the most careful attention your committee could give them; but, in justice to the committee, I *must say this examination has*

been confined entirely to what seemed to be the principal papers in each case; having no time to scrutinize the evidence and the application as made by the Surveyor General, of the Spanish and Mexican laws and usages to each of them in detail. Nor will it ever be in the power hereafter of any committee of this House to make such an examination as will be entirely satisfactory should these claims be allowed to accumulate before Congress.

He then proceeds to argue in favor of the creation of a Land Board as proposed by the accompanying bill, and, among other things, says:

"In view of such action the people of New Mexico are not at all pleased to be compelled by law to submit their muniments of title *to one man, whose fitness for* SURVEYING *is not supposed to qualify him particularly for discharging the duties of a* JUDGE, and yet whose opinions are expected to control, to a great extent, the final action of Congress upon their claims. * * * But as Congress may not create such a Board, and as it is due to the parties interested that the titles by which their lands are held should not be passed over *to be settled by another generation*, your committee have authorized me to *report favorably* (with one or two modifications) *upon all the claims recommended* for confirmation by the Surveyor General, *with the understanding that* should the action of Congress conform to the views of the committee as to this Board, *the claims may be finally determined under the new law.* But for the gross injustice to the people of New Mexico, of delaying for an indefinite period action upon their claims, and the certainty that under existing arrangements Congress can never consider them under more favorable circumstances than at this time, *your committee would not have been willing to report upon any of these individual claims for the reason first stated—want of time to examine fully*, and *the unknown quantity of land claimed* by *most of the parties.*

"This last difficulty cannot be obviated *without a survey of the lands*, and that, it is presumed, will not be ordered by Congress in advance of a recognition of title.

"Of the *fourteen claims* proposed to be confirmed by the bill herewith reported, *the area of but five of them* is *either stated or estimated.* They are for 1 league, 4 leagues, 7,600 acres, and about 20,000 acres.

"*Whether the other claims embrace a less or a greater amount*

is not and cannot be made known from the documentary evidence of title forwarded by the Surveyor General.

"The grant in each case refers to some stream, hill, mountain top, valley, or other known natural object for boundary." (Report No. 321; Reports of Com. of House of Reps., 1st sess. 36th Cong., vol. 2, 1859–'60, pp. 1, 2.)

The House passed the bill as it was reported by its committee, and, no doubt, for the reasons therein expressed.

2d. In the Senate, the House bill No. 195 and the various reports of the Surveyor General of the Territory of New Mexico in relation to private land claims in that Territory were referred to the Senate Committee on Private Land Claims. That committee on the 19th of May, 1860, through its chairman, Mr. Benjamin, made a report, recommending that the House bill should be amended and changed into the form in which it finally passed *both Houses.* This report of the Senate is valuable, therefore, as expressing not merely the views of the Senate, but the final views of *both* Houses on the subject-matters of the act of June 21, 1860.

In their report the Senate committe say:

"That, after examination of the various claims mentioned in the letter of said Surveyor General to the Commissioner of the General Land Office, dated the 12th day of January, 1858, they concur in *the recommendation* of the said officer, that the said claims should be confirmed, with two exceptions, which they now proceed to notice."

The first exception was in the case of John Scolley and others, claim No. 9, in which the Surveyor General had recommended a confirmation of the "case" or claim for twenty-five square leagues, under a grant for "five square leagues," and an order of the Governor to the justice of the peace to place the grantees in possession of "as much arable land as, in their opinion, they could cultivate." Under that order they were formally placed in possession of "twenty-five square leagues," under the notion that "*five leagues square*" only included the same quantity of land as "*five square leagues.*" That quantity was approved by the Surveyor General as being the quantity which the

grantees, "in their opinion, could cultivate." (See House Report No. 321, p. 180–182.)

Nevertheless, the committee of the Senate, entertaining a different opinion, "recommended that the confirmation of the claim of John Scolley and others should be restricted to five square leagues." (Senate Reports of Committees, No. 228, 1st sess. 36th Cong., vol. 2, 1859–'60, p. 1.)

"The second exception," continues the report, "made by your committee is in relation to claim No. 17, which the Surveyor General recommends in favor of Cornelio Vigil and Ceran St. Vrain, for the full extent embraced in a survey annexed to the papers. *The quantity of land embraced in this survey does not appear;* but by a close examination of some of the distances shown, and a rough calculation of the others, *there cannot well be less than one hundred square leagues, and possibly much more.*" (Ib., p. 1–2.)

The committee then proceed to give an abstract of the facts in that case, which on a fuller examination of the documents in House Report No. 321, p. 271, &c., will be found to be almost identically the same, (*mutatis mutandis,*) with the facts in the case of the Sangre de Christo grant. From accident or for some satisfactory reason it seems not to have attracted the attention of the committee as being liable to the same objections as claim No. 17, which they were then considering. In that case, however, the views of the committee on the general subject matter of all such claims are thus fully stated:

"Under these petitions and orders the two claimants were placed by the justice of the peace, on the 2d of January, 1844, in possession; not, each "of a tract of land in the above-mentioned locality," *but were jointly put in possession of the whole district of country*, including the land on both banks of those tributaries of the Naperte or Arkansas river, from the mouths nearly to their sources, AND WITHOUT THE SLIGHTEST APPARENT WARRANT IN THE GOVERNOR'S ORDER FOR SO EXORBITANT A GRANT."

"If this demarkation of boundaries by the justice of the peace had been afterwards brought to the notice of the

Governor and approved by him, *a grave question would still remain as to his power to concede entire districts of country without the authorization of the provincial assembly or the Mexican Congress;* but your committee find no proof in the paper *of approval of this action by any officer superior to the justice of the peace;* and as his power clearly could not go beyond the execution of the Governor's orders, your committee cannot concur in the recommendation of the Surveyor General that this grant be confirmed for the full extent claimed. It is, however, plain that these parties are entitled to have their title confirmed *to some extent;* and this involves the inquiry as to the true meaning of the words, 'a tract of land,' claimed in the original petition.

"Under the Mexican colonization law of 1824 and the regulations of 1828 *the extreme quantity* allowed to be granted by the Governor to any colonist *was eleven square leagues. In the absence of any other guide*, your committee suggest that a restriction of the confirmation to an extent of eleven square leagues for each claimant would be *the utmost* they could fairly expect, and would be not only a fair, but *a liberal compliance* with the obligation imposed on the good faith of the United States under the terms of the treaty of Guadalupe Hidalgo." (Senate Report, ib., p. 2.)

"The committee have therefore prepared an amendment to the House bill, *by way of substitute*, embracing the several provisions above referred to." (Ib., p. 4.)

This report of the Senate committee was adopted. The House bill, as amended by the substitute reported, was passed by the Senate, and it was afterwards concurred in by the House of Representatives.

3d. The law, as it stands, is therefore authoritatively expounded by the report of the Senate Committee, because it is well-known that, in these land claims and others of a quasi-judicial character, Congress acts almost invariably upon the reports of the committees to whom they are referred.

If so, then it is clear beyond all question that the Senate Committee, and consequently both Houses of Congress, concurred in the recommendations of the Surveyor General for confirmations in all the claims mentioned in the first section of the act of June 21, 1860, *except* the two

mentioned in the proviso, *on the ground* that they were severally understood *to include less* than the maximum quantity of land grantable under the colonization law of Mexico; and that in the excepted cases the restrictive proviso was inserted expressly, because his recommendations in each of those cases only, were understood *to include more than that maximum quantity.* The action of Congress in this matter must receive a reasonable, as well as an equitable, interpretration. How absurd it would be to hold that Congress, (while professedly engaged, as we have seen, in doing nothing more than redeeming its treaty obligations with Mexico,) in the case of John Scolley and others, in which a confirmation of the claim for twenty-five leagues was recommended, had deliberately restricted it by an express proviso to five square leagues, (the quantity really granted,) and in the case of the joint claim of Cornelio Vigil and Ceran St. Vrain, in which a confirmation of the claim had been recommended for at least one hundred leagues, had considered itself, in the supposed "absence of any other guide," as acting very liberally in redeeming its plighted faith by restricting the confirmation to twenty-two leagues, the maximum quantity grantable under the colonization law of Mexico; and that, nevertheless, not only without any special reason in the case of the Sangre de Christo grant, but directly contrary to the very principle which governed its action in all the other cases, had as deliberately confirmed it for 225 leagues or a million of acres!

But it may be suggested, in answer to this objection, that Congress has ignorantly done what it did not intend to do. If so, then, under the authorities cited under this branch of the argument, under the doubt and ambiguity which we have shown to exist in the case, the *court may construe the statute according to its obvious intention.* But if, in order to avoid this result, the fact of ambiguity be denied, and an appeal should be made to *the letter of the statute*, such an appeal will not be more successful.

A critical examination of the recommendations of the

Surveyor General in the two excepted cases will show that in each of them he recommended a confirmation of "THE CLAIM" both *in word* and *in fact*. (House Rep. No. 321, pp. 179, 182; Ib., 277, 278.) But we have already seen that his recommendation in the case of the Sangre de Christo grant was only for a confirmation of "THE GRANT," and not of "the claim;" that the grant, *literally* interpreted, confers title to only two square leagues of land, and that the first section of the confirmatory act of Congress confirms the claim *only* "*as recommended for confirmation by the Surveyor General*"—that is, for two square leagues of land, instead of 225!

We have also seen that, in the judgment of the Senate committee, (which became that of Congress,) "a grant" for "a tract of land" ("un sitio de tierras") within outboundaries similar to those in this case (House Report No. 321, pp. 269, 271, 272) "does not furnish the slightest warrant for a claim to all the land within those outboundaries;" that the similar act of juridical possession in that case, based on the same idea as the claim was in this case, was a nullity, and that, "in the absence of any other guide," the confirmation of the claim in that case for twenty-two square leagues was regarded as a "liberal compliance with the treaty obligations of the United States."

That opinion, it will be observed, was based upon the same translation of the phrase common to both the cases, ("un sitio de tierras,") by the words "a tract of land," just as in this case. But if the attention of the committee had been called to the original grant, or to a *literal* translation of it, it is obvious there would have been "no such absence of a guide." The grant itself would have become a definite guide, defining the quantity of the grant as two leagues in that case, exactly as in this, and saving twenty square leagues of land. If *the letter* of the law is insisted upon, then we insist upon *the letter throughout*, and upon the restriction of the Sangre de Christo grant to the quantity of two square leagues of land, the only quantity (accord-

ing to the letter of the law) either granted or confirmed by the act of Congress!

But, in any view of the various considerations presented, (which need not be recapitulated,) we insist that, under a rational and equitable construction, the legislative confirmation of the Sangre de Christo grant cannot by any possibility be held to exceed twenty-two square leagues, the maximum quantity allowable under the colonization law of Mexico.

This general conclusion is fully sustained by a recent decision of Hon. S. S. Burdett, the present Commissioner of the General Land Office, in the case of the Rancho los Prietos y Majalayegua, California, wherein he was called upon to give a construction to a confirmatory act of Congress in a case somewhat similar, in which a claim was made for forty-seven square leagues of land. He rejected the claim on the ground that it was contrary to the law of Mexico; that the act was not a new grant, but one of confirmation under the colonization law of 1824. His opinion is one of great ability, and is fortified by an abundant citation of authorities, to which this court is referred. As it may not be readily accessible to the court, it has been printed as an appendix to this argument, pp. 36–43.

Fifth Error.

The judgment must be reversed:

Because, according to these principles, as we have seen, the confirmee of the Sangre de Christo grant (under whom the defendant in error claims) was not entitled to more than two square leagues according to the original title papers; or, according to the most liberal construction and the analogy in the case of Cornelio Vigil and Ceran St. Vrain, in a parallel case under the same law, to more than twenty-two square leagues; and, also, because in either case, inasmuch as the said quantity of land has not been segregated from the rest of the land within the exterior boundaries of said claim, this court cannot find, as is required by the terms of the submission, that the defendant

in error is entitled to the possession of the specific land now in the possession and occupancy of the plaintiff in error; and, therefore, the judgment of the Supreme Court of Colorado in this case must be reversed and judgment be entered for the plaintiff in error, according to the terms of the stipulation filed in the case.

This proposition presents a synopsis of the whole argument in the case. It need not be further elaborated. If the premises, which it has been the effort of the whole argument to establish, are correct, then the conclusion at which it arrives is inevitable: the judgments of the courts below must be reversed and a judgment be entered by this court in favor of the plaintiff in error.

JOHN A. WILLS,
Counsel for Plaintiff in Error.

APRIL 19, 1876.

APPENDIX.

Decision of U. S. Land Commissioner S. S. Burdett, in the case of the Rancho Los Prietos y Najalayegua, California.

The confirmatory act declares that "the grant to José Dominguez of the land known as Los Prietos y Najalayegua, in the county of Santa Barbara, granted to him at Los Angeles, September 24, 1845, by Governor Pio Pico, and approved by the Departmental Assembly of Alta California, June 3, 1846, *is hereby confirmed*, and the surveyor general of California is hereby directed to proceed and survey said land *in accordance with the original title papers on file in his office*, and when said survey shall have been approved by the Commissioner of the General Land Office, a patent shall issue for said lands to said Dominguez, or parties holding under him by inheritance or otherwise. This confirmation shall only be construed as a relinquishment on the part of the United States, and shall not affect the adverse right of any person whomsoever."

The original title papers thus referred to show that in 1841 Dominguez petitioned the Mexican Governor of California *for the grant of a tract of land, as shown by a map annexed to his petition*, and within the limits of the Pobla-

cion of Santa Barbara; that on the 7th of June, 1841, said petition was referred to the prefect; that on the 27th of January, 1843, the alcalde of Santa Barbara was called upon for report concerning the land petitioned for; that on the 3d of March, 1843, the alcalde reported; that on the 23d of September, 1843, Dominguez again petitioned the Mexican Governor for a place called Prietos y Najalayegua; that on the 24th of September, 1845, the Governor conceded the land petitioned for, the said concession reciting that it was made in conformity with the law of 24th (18th?) August, 1824, and the regulations of the 21st November, 1828, and that the whole espediente was referred to the Departmental Assembly, and approved by that body as follows:

"SIR: The Committee on Vacant Lands have carefully examined the present espediente instituted by the citizen José Dominguez of the land of Prietos y Najalayegua, which was granted to him by the superior departmental government, in accordance with the laws on the subject; wherefore the committee submit for the consideration of your excellency the following proposition:

"'That the concession made to the citizen José Dominguez of the place of Prietos y Najalayegua, in the jurisdiction of Santa Barbara, *be approved to extend as shown by the map in the espediente*, according to the title issued on the 24th of September last, in accordance with the law of the 18th of August, 1824, and article 5 of the regulations of the 21st of November, 1828. Committee chamber, in the city of Los Angeles, May 26, 1846.

"S. ARGUELLO."

"ANGELES, *June* 3, 1846.

"In the session of to-day the excellent Departmental Assembly approved the proposition of the foregoing report."

There is also in the espediente an unsigned grant dated September 24, 1846, but it contains no description or reference for description of the land donated other than that set forth in the concession and in the approval by the Departmental Assembly, and it is, therefore, an unimportant document, for the concession seems to have been duly signed, and, beside, the approval by the Departmental Assembly, though not absolutely indispensable, yet, when given, was the official action that gave validity to the donation, and might either confirm, modify, or nullify the Governor's concession grant, (United States *v.* Hartnell's Executors, 22

Howard, p. 286,) though it seems it could not take the initiative in making such grants, that being by law vested in the Governor, to whom it was an advisory body, sustaining the same relation that the Senate of the United States does to the President in matters of treaties and appointments. (United States *v.* Vigil, 13 Wall., pp. 451 and 452.)

With these title papers it is evident *we have no description to guide us in locating the grant, except that it is a place called Prietos y Najalayegua, near Santa Barbara, as shown by the diseño, and that it was made under the colonization law of Mexico.*

As, under these title papers and the confirmatory act of 1866 *it is insisted by the claimants that they are entitled to a tract of land containing about forty-seven square leagues,* I deem it proper, before proceeding further in the examination of the record in this case, to determine whether or not the grant, having been made under the colonization law, has been confirmed for a greater area than eleven square leagues.

It is a well-established principle of law that a public officer can bind the government he represents only by acts which come within a just exercise of his official power. (Story on Agency, sec. A, 507; Bennet *v.* United States, 6 Nott & Hunt, p. 110; Hunter *v.* United States, 5 Peters, p. 188.) In the adjustment of Spanish grants in Louisiana and Florida, however, the Supreme Court of the United States held, in "United States *v.* Arredondo," (6 Peters, p. 727,) "that the public acts of public officers purporting to be exercised in an official capacity and by public authority shall not be presumed to be a usurped, but a legitimate, authority, previously given, or subsequently ratified, which is equivalent;" and in "United States *v.* Clark," (8 Peters, p. 451,) and "Delassus *v.* The United States," (9 Peters, p. 134,) that doctrine is reasserted, and in the case of "United States *v.* Peralta *et al.*," (19 Howard, p. 397,) the same principle is applied to grants in California made prior to the colonization law of August 18, 1824. But in Cambuston's case (20 Howard, p. 63) the court held that no such presumption as to the validity of official acts was necessary or admissible in respect to Mexican titles granted since the Mexican act of 18th Aug., 1824, and the (Mexican) regulations of 21st Nov., 1828, authority to make the grants in those cases having been expressly conferred on the Governor, as well as the terms and conditions prescribed upon which they should be made, and that the court must look

to those laws for both the power to make the grant and for the mode and manner of its exercise; and following the dictum in this case, the United States Circuit Court held, in "Den *v.* Hill," (1 McAllister, p. 437,) that the powers of the Mexican Governors in California to grant even vacant land was restricted, and could be legally exercised only when in conformity with the provisions of the colonization decree of 1824 and the regulations of 1828. This decree and these regulations, as is well known, restricted grants in donations by the Governor, or approvals of such grants by the Departmental Assembly, to any one person, to eleven square leagues, one of irrigable land, (*de regadis*,) four dependent on the seasons, (*de temporal*,) and six for the purpose of rearing cattle, (*de abreradiso*.) (See sec. 12, Decree of August 18, 1824, and sec. 4, Regulations of November 21, 1828; United States *v.* Larkin, 18 Howard, p. 561; United States *v.* Hartnell's executors, 22 Howard, p. 286; United States *v.* Vigil, 13 Wall., p. 452; and United States *v.* Pico, 5 Wall., p. 539.)

That Congress may grant the public lands of the United States, with such limitations and in such manner as it may deem proper, is unquestioned; and though it has been seen by the references and recitals before given that the powers of the Mexican colonial authorities were restricted, as to the alienation of the public domain appertaining to that republic, to eleven square leagues to any single applicant, and though any attempted alienation of a larger area by such authorities would be of no effect, yet it does not follow that such non-effective or void act might not have been made effective—confirmed—by the same authority which prescribed the restrictions limiting the powers of the provincial governor and assemblies, nor can there be question that the Government of the United States, succeeding to that of Mexico, might, by the act of its Congress, give sanction and validity to a Mexican colonial grant attempted to be made in excess of the prescribed maximum of quantity, and clearly in defiance of the Mexican laws regulating that subject; and if it is found that by the terms of the act of June 12, 1856, such a grant or attempted grant was presented for the action of Congress, and found the favor of confirmation, it must be adjusted by this office to the area awarded by the act, and not within the limits nor under the prescriptions of the Mexican law of 1824. This is but the iteration of the principle hereinafter stated, that if such be the *intention* of Congress a confirmation

may make valid a void thing, and is as fully, to all intents and purposes, a grant as if, instead of the word "confirmed," technical words of grant had been used. Upon this particular question, so far as its theoretic expression is concerned, this office is in substantial accord with the views urged by the attorneys for the grant claimants. It is not intended, therefore, to be held that the Mexican law of 18th August, 1824, and the regulations of the 21st November, 1828, are to be considered as an attaching proviso, understood, to every act of Congress having reference to a colonial grant; nor that they are necessarily of explanatory or limiting force in all such acts, though that they may be appealed to as furnishing, in some sense, a rule of interpretation and a measure of maximum quantity in many, and, perhaps, in most such cases, is insisted upon. The rule in such cases, which seems to me to be consonant with reason, in accord with the current of decisions covering the subject, and which recognizes the authority of Congress in the disposal of the public domain, may be thus generalized: The confirmatory act will govern, without inferential qualification whatever as to quantity, location, and boundaries whenever there is found within its body distinctive provisions on these points. Such an act, though using words only of confirmation, would, in fact, carry over to the beneficiary every right which might pass by an original grant. If the confirmatory act does not, by its own terms, undertake to measure the quantity confirmed, the location and boundaries of the grant, but *refers* for these particulars to other acts, authorities, or office files, such reference will serve to constitute the act, authority, or file, for all purposes of executive action or conveyance of privilege or title, an integral part of the act of confirmation, if, as thus constituted, location and boundary are clearly ascertainable, and are not limited or referred for quantity to the colonization regulations. In such case, also, the incidents and benefits attaching to an original grant might well be claimed; but where the act is one of confirmation by its terms, and refers for every possible evidence of right to grant, and extent and place of that which was given to an authority bound by the limitations of the colonization laws, and when it further appears that the authority so acting under well defined restrictions not only is free from any suspicion, so far as may be gathered from the record, of attempted or purposed violation or evasion of the colonial law, but that in discharging this executive duty in

the matter of the petition both governor and assembly in express terms attach to the grant by reference thereto the provisions in that behalf of the law of August, 1824, and of article fourth of the regulations of November, 1828, it is not perceived how room can be left for any enlargement of area beyond the lawful quantity of eleven square leagues. Such a case is one of *confirmation only*, and *not of grant* by the United States, either original or resulting.

The rules of construction in such cases are well settled by a long series of judicial decisions. That nothing passes by implication in a public grant was decided in United States *v.* Arredondo, (6 Peters, p. 738,) and cases there cited, and in Charles River Bridge *v.* Warren Bridge, (11 Peters, pp. 544 and 546;) and referring to the case last named the same court held, in Dubuque and Pacific Railroad Company *v.* Litchfield, (23 Howard, p. 88,) that grants to a railroad company of public land are to be "strictly construed against the grantee;" that by such grants "nothing passes but what is conveyed in clear and explicit language;" and that as the rights claimed were derived solely from an act of Congress, the donation stood "on the same footing of a grant by the public to a private company, the terms of which must be plainly expressed in the statute, and if not thus expressed they cannot be implied." And again, in Rice *v.* Railroad Company, (1 Black, p. 380,) where the defendants contended in argument that legislative grants should be construed most strongly against the *grantor*, the court held that "legislative grants undoubtedly must be interpreted, if practicable, so as to effect the *intention* of the grantor; but if the words are *ambiguous*, the true rule of construction is the *reverse* of that assumed by the defendants." Having due care to the subject matter before the court, these decisions are in harmony with the conclusion in Wilkinson *v.* Leland, (2 Peters, p. 662,) that the common-law meaning of the words "ratify and confirm," in a deed of confirmation between private parties, does not apply when those words are used in legislative acts; for, when thus used, a confirmation may make valid a void thing, *if such is the intention of the legislature.* The court also held, in Strother *v.* Lucus, (12 Peters, p. 454,) and Chouteau *v.* Eckhart, (2 Howard, p. 373,) that "a confirmation by a law is as fully, to all intents and purposes, a grant as if it contained in terms a grant *de novo*." But these cases must be understood to apply only in cases where *the intention of Congress*,

by the confirmation, *was to make a grant*, otherwise they are in conflict with the previous decision in 2 Peters, (page 662,) and are overruled in the subsequent and recent case of Henshaw *et al. v.* Bissell, (18 Wallace, p. 264,) wherein it was held that a confirmation, pursuant to the act of March 3, 1851, of a Mexican grant in California, established nothing but the validity of the claim as it existed at the date of the treaty of Guadalupe Hidalgo. But if these decisions are to be understood as relying for interpretation upon *the intention of Congress*, then they may all agree-the reason for the apparent conflict being found in the *different intention* of Congress in the use of the word "confirmed" in the various acts which the court construed in the cases cited. This seems to me the true reason, and I am strengthened in this conclusion from the fact that only with respect to claims in the Louisiana purchase and Florida, where the relations of the Spanish Government to its agents for the disposal of land were such as sometimes to raise the presumption that the acts of such agents, apparently in excess of their authority, had been subsequently ratified, has a confirmation been held equivalent to a grant; while in California, where no such presumption was allowed in the settlement of Mexican colonization grants because the duties of the granting officers were clearly and unmistakably defined by law, the word "confirmed" has been uniformly held to import simply the validation of a pre-existing equity or inchoate right. Upon this latter question there seems no reasonable doubt. The case of Henshaw *et al. v.* Bissell settled that such confirmations were not new grants, and the same ruling has been made by the Acting Secretary of the Interior in the case, of the California private land claim Caslamayomi, Forbes, confirmee, holding that "the confirmation of their respective claims (Caslamayomi and Musalacon) by the United States was not a new grant, but confirmed to them what was theirs under the Mexican law."

From these definitions I deduce the rule—

That legislative grants must, if practicable, be interpreted so as to effect the *intention* of the grantor, and that where the words of the grant are ambiguous the construction must be most strongly against the grantee; and applying this rule—

That *if such be the intention of Congress*, a confirmation may make valid a void thing, and is as fully to all intents

and purposes a grant as if instead of the word "confirmed" technical words of grant had been used.

But with respect to the confirmations of colonization grants made by the Mexican Governors in California, the only effect of such confirmation, as found in the act of March 3, 1851, is to validate the pre-existing equitable title.

I find nothing in the confirmatory act of June 12, 1866, in favor of Dominguez, that will warrant me in holding such confirmation to be *a new grant*. No words of grant are used in the act, nor is anything attempted to be confirmed, except a Mexican grant to Dominguez, minutely described in said act as having been granted and approved on a given date by certain parties therein named. So carefully drawn is the act it is believed no difficulty could arise in reaching the intent of Congress with respect to such grant without the light with which the decisions quoted have surrounded it; but when by reference to them we find that the confirmation of exactly similar grants made no new grant, the conclusion is irresistible that in this case nothing was intended to pass but the interest of the United States in land which had theretofore been granted by the Mexican Government. Nothing appears to suggest any other conclusion, neither in the history of the claim nor in the record now before me, nor in the history of grants by the United States, for it has never been the practice of Congress to make new grants of this description to individuals without consideration and purely for the private benefit of the grantee. I, therefore, decide that the effect of the confirmation to José Dominguez by the act of June 12, 1866, was solely to confirm him in his title to a grant he had previously received from the Mexican authorities, and that as such grant was a colonization grant, and could not have exceeded in area eleven square leagues of land, the confirmation can only be held valid for that area, and then only, provided it be found that the exterior boundaries, as shown by the original title papers in the case, include an area equal to or exceeding eleven square leagues. (*Western Land Owner*, Washington, D. C., November, 1874, p. 118–121.)

In the Supreme Court of the United States.

OCTOBER TERM, 1875.

JOHN G. TAMELING, PLAINTIFF IN ERROR,

vs.

THE UNITED STATES FREEHOLD LAND AND EMIGRATION COMPANY.

CASE.

This suit was an action of ejectment brought by the United States Freehold Land and Emigration Company against the plaintiff in error, in the District Court for the County of Costilla, in the Territory of Colorado. By stipulation (Record, fol. 7) the said cause was transferred to the District Court for the County of Pueblo, in the said Territory, where it was tried without the intervention of a jury and upon an agreed statement of facts (Record, fols., 10, 38.) In said suit the plaintiff below had recovery (Record, fol. 39), and that judgment was affirmed on appeal by the Supreme Court of the Territory. (Record, fol. 51.)

The material facts are set forth with certainty in the said agreed statement, and may be summarized as follows:

On the 27th of December, 1843, Luis Lee and Narciso Beaubien petitioned to Manuel Armijo, civil and military Governor of New Mexico for a grant of land "embracing the Costilla, culebra, and Trinchera Rivers, including the Rita of the Indians, and the Sangre de Cristo to its junc-

tion with the Del Norte River," promising to undertake the settlement of the same within the time required by law, and to establish and fix thereon a colony. (Fol. 15.)

December 30, 1843, Governor Armijo referred this petition to the prefect with instructions that the possession of the land petitioned for should be given to the petitioners if the same was not otherwise disposed of. (Fol. 16.)

January 7, 1844, the prefect referred the petition to the Justice of the Peace having jurisdiction, with instructions that he should place the petitioners in possession if same could be done without injury to third parties. (Folio 16.)

January 12, 1844, the Justice of the Peace, José Miguel Sanchez proceeded with the petitioners, and with the instrumental and attending witnesses whom he had summoned to the land petitioned for, and these going through with the prescribed method and formula of investiture, he placed the petitioners in the possession of the tract of land specifically described by metes and bounds as follows: "commencing on the east side of the Del Norte River, a mound was erected at one league distance from its junction with the Costilla River; thence following the Rio del Norte on the same eastern bank to one league above the junction with the Trinchera River, where another mound was erected, and continuing from west to northeast following up the current of the Trinchera River, to the summit of the mountain, where another mound was established; and following the summit of the mountain to the boundary of the lands of Miranda and Beaubien; the fourth mound was established, and continuing on the summit of the Sierra Madre, and following the boundary of the aforementioned lands to opposite the first mound erected on the Del Norte River, where the fifth and last mound was erected; and from thence in a direct line to the first one erected on the north." (Folio 17, 19.)

Both Lee and Beaubien were killed at the massacre of

Taos, 1847, and by purchase and inheritance their rights in the said grant became vested in Charles Beaubien. (Folio 36.)

By the act of July 22. 1854, (Statutes, vol. 10, p. 308) Congress provided for the appointment of a Surveyor General for New Mexico, and by the eighth section of that act imposed upon such officer the duty of ascertaining the origin, nature, character, and extent of all claims to lands within his district under the laws, usages and customs of Spain and Mexico, and to make a full report of all such claims, denoting the various grades of titles, with his decision as to the validity or invalidity of each under the laws, usages, and customs of the country before its cession to the United States, which report it was required, should be laid before Congress for such action thereon as might be deemed just and proper.

In 1856 Charles Beaubien presented to William Pelham, Surveyor General for New Mexico, a petition containing a statement of his title under the grant to Lee and Beaubien, and asking an examination of same and a recognition of his rights. He described the land claimed by him by the metes and bounds fixed by the Justice of the Peace, Sanchez, on the 12th of January, 1844, and stated that he could not show the quantity of land except as it was set forth by such description, nor could he furnish a plat thereof, as no survey had ever been made. (Folio 25, 28.)

After taking testimony as to the facts, and fully considering the documentary and parol evidence submitted to him, the Surveyor General reported, December 30, 1856, that in his opinion the grant was a "good and valid one, and that a legal title vests in Charles Beaubien to the land embraced within the limits contained in the petition." He therefore formally approved the said grant, and recommended that same be confirmed by Congress. (Folios 32, 35.)

On the 11th of February, 1857, the Secretary of the

Interior transmitted to the Speaker of the House of Representatives the report of the Surveyor General, with accompanying papers, in this and other similar cases. Copies of the same were also at the same time presented to the Senate. (Folio 12.) This case was therein designated as No. 14.

By the act of Congress, approved June 21, 1860, entitled "an act to confirm certain private land claims in the Territory of New Mexico," (Statutes, vol. 12, p. 71) it was by the 1st section enacted "That the Private Land Claims in the Territory of New Mexico as recommended for confirmation by the Surveyor General of that Territory * * * designated as numbers one, three, four, six, eight, nine, ten, twelve, *fourteen*, fifteen, sixteen, seventeen, and eighteen, and the claim of E. W. Eaton * * * * be, and they are hereby, confirmed; *Provided*, that the claim number nine, in the name of John Scolley and others, shall not be confirmed for more than five square leagues; and that the claim number seventeen in the name of Cornelio Vigil and Ceran St. Vrain, shall not be confirmed for more than eleven square leagues to each claimant." Section 2 of the act provided for the manner of surveying the said claims of John Scolley and of Vigil and St. Vrain, confirming them to the area confirmed to each. Section 3 confirms a second list of claims by numbers, and excepts one claim, number twenty-six, which it declares is not confirmed. Section 4 provides, "that the foregoing confirmation shall only be construed as quit claims or relinquishments, on the part of the United States, and shall not affect the adverse rights of any other person or persons whomsoever." The remaining sections of the act contain nothing material to this inquiry.

It is agreed that the claim referred to in said act as "*number fourteen*" was the claim of Charles Beaubien to the "Sangre de Christo Grant," hereinbefore described by its boundaries. (Folio 36.)

That subsequent to the passage and approval of the said act, by regular *mesne* conveyances, the United States Freehold Land and Emigration Company, plaintiffs in the original suit, acquired all the right, title and interest of the said Charles Beaubien of, in and to the "Costilla estate;" that the said "Costilla estate" was embraced in and formed a part of the said "claim number fourteen," or "Sangre de Christo Grant;" and that the small tract described in the plaintiff's declaration in the original suit, and for the possession of which the action was brought, formed a part of the said "Costilla estate." (Folios 36 and 37.)

Under this state of facts, the only question presented for determination is as to the force, effect and extent of the confirmation made by the said act of Congress of June 21, 1860. Did it operate to vest in the confirmee a legal title to all the land within the boundaries described in his petition, or was it simply a confirmation of a lesser quantity, viz., of twenty-two square leagues, to be measured out to him within those boundaries?

The case of the plaintiff in error rests upon these propositions: That under the colonization laws of Mexico in force at the time this grant was made, the governor had authority to grant, in fee, eleven square leagues only to one individual; that his grant to Leeand Beaubien being of a tract exceeding in area eleven square leagues to each grantee, was invalid as to the excess; and that the act of Congress confirming the grant must be construed as confirming only that to which the confirmee had legal title, viz., twenty-two square leagues.

ARGUMENT.

I.

As to the Nature and Character of this Grant Prior to its Confirmation by our Government.

Although it is not of vital importance to our case, we insist that this grant, even prior to any action had thereon by our Government, was not *void*, but was, at most, simply voidable. The plaintiff in error insisted in the court below that the "Colonization Act" of Mexico of August 18, 1824, and the "regulations" thereunder of November 21, 1828, restricted the powers of governors of provinces or territories, prescribing in substance that but eleven leagues should be granted to any one person; that, therefore, the act of the Governor in this instance was void, in so far as the grant made by him to Lee and Beaubien exceeded the quantity of eleven leagues to each grantee.

It being conceded that the governor had authority to make a grant, it cannot be presumed that in making this particular grant he exceeded his authority. On the contrary, a presumption arises from the grant itself that the officer had authority to make it; and "he who would controvert it, takes on himself the burden of showing that the officer has transcended the powers conferred upon him, or that the transaction was tainted with fraud."

U. S. *vs.* Clark, 8 Peters, p. 436.
Delassus *vs.* U. S., 9 Peters, p. 117.
Strother *vs.* Lucas, 12 Peters, p. 410.
U. S. *vs.* Peralta, 19 Howard, p. 343.

In this case there is no fraud alleged in making the grant; but, on the contrary, the plaintiff in error concedes that it was a valid grant to the extent of twenty-two leagues. He simply assumes that under the colonization law of 1824, and regulations of 1828, the governor's

authority to grant was limited to that amount to two grantees.

On the other hand the Surveyor General, the officer whose duty it was made by law to examine, consider and report upon these claims, ascertained and reported that "the supreme authorities of the remote province of New Spain, afterwards the Republic of Mexico, exercised from time immemorial certain prerogatives and powers, which, although not positively sanctioned by Congressional enactments, were universally conceded by the Spanish and Mexican governments, and there being no evidence that these powers were revoked or repealed by the supreme authority, it is to be presumed that the exercise of them was lawful. The subordinate authorities of the provinces implicitly obey these orders of the governor's, which were continued for so long a period until they became the universal custom (or unwritten law) of the land, wherein they did not conflict with any subsequent Congressional enactment." (Folio 34.) He therefore found in this case that "the grant being a positive one, without any subsequent conditions attached, and made by competent authority, and having been in the possession and occupation of the grantees and their assigns from the time the grant was made, it is the opinion of this office that the grant is a good and valid one, and that a legal title vests in Charles Beaubien to the land embraced within the limits contained in the petition. The grant is, therefore, approved by this office." (Folio 35.) Thus he concluded that under the circumstances of the case Charles Beaubien's title was good and valid, in accordance to the usages and customs of the country, to all the lands embraced within the boundaries contained in his petition.

But further, we insist that this grant was not one of those which were subject to the limitation alleged to have been imposed upon the governors of provinces by the "colonization law." Referring to the petition of Luis

Lee and Narciso Beaubien, (folio 15,) it will be observed that in asking for the grant they undertook "to commence the settlement of the same within the time prescribed by law *until the colony shall be established and permanently fixed.*" In other words, they asked for the lands not only for their own use, but for the purpose of establishing a colony thereon, which they undertook to fix permanently. Turning now to the petition of Charles Beaubien to the Surveyor General, made in 1856, (folio 28,) it will be seen that he succeeded to the grant with the understanding that it was made for the purposes of colonization, for after reciting the fact that Luis Lee and Narciso Beaubien remained in the actual possession and occupation of the land from the time when the possession was given to them, January 12, 1844, until their death in 1847. He further offers to prove, should it be deemed necessary, "that since the said grant came into his possession he has had made extensive settlements on the same, and that it is becoming under his ownership rapidly populated." The Surveyor General did not require proof upon that point, but as matter of fact, some thousands of colonists, embracing the towns of San Luis and of Costilla were put on these lands, all claiming title from these grantees. Thus it appears that the grant was originally petitioned for and made, not only for the uses of the petitioners, but for the purpose of establishing a colony thereon, and that when Charles Beaubien succeeded to their rights he carried out the purpose for which the grant was made, and did actually colonize it. The grant was not made to *colonists*, but to *colonizers*—"*empressarios*," as they were known in the Mexican law.

And the "colonization laws" of Mexico recognized this distinction. The decree of August 18, 1824, provided mainly for independent colonists. After setting apart a portion of the territory and providing for its distribution among individual settlers, giving the preference to Mexi-

can citizens over foreigners, and enacting that for a period of four years no duty should be imposed on the entry of the latter into the country, all having reference to individual colonists, the 12th Section provides as follows:

"Sec. 12 No one person shall be allowed to obtain the ownership of more than one league square, of five thousand varas, of irrigable land; four superficial ones of land dependent upon the seasons, and six superficial ones for the purpose of rearing cattle."

It is this section which is relied upon as limiting the power of the governor to grant. Taken in connection with the preceding portion of the decree, it plainly has reference only to grants to individual colonists, for almost immediately following it is—

"Sec. 14. This law guarantees the contracts which the grantees (empressarios) may make with the families which they may bring out at their own expense; provided they be not contrary to the laws."

Thus clearly recognizing a distinction between grants to be made to individual colonists and those to be made to colonizers, (empressarios,) and fixing no limit to the area which might be granted to these latter. Indeed, in the nature of things, no limit could practically be fixed for these latter grants, as their size would necessarily depend upon the magnitude of the empressarios' undertaking.

This distinction is more clearly recognized in the regulations of November 21, 1828, enacted for carrying into effect the decree of 1824. The first and second sections are as follows:

"1st. The governors of the territories are authorized (in compliance with the law of the general congress of the 18th of August, 1824, and under the conditions hereafter specified) to grant vacant lands in their respective territories to such contractors, (*empressarios*,) families or private persons, whether Mexican or foreigners, who may ask for them for the purpose of cultivating and inhabiting them."

"2d. Every person soliciting lands, whether he be an *empressario*, head of a family, or private person, shall address to the governor of the respective territory a petition, expressing his name, country, profession, the number, description, religion, and other circumstances of the families or persons with whom he wishes to colonize, describing as distinctly as possible, by means of a map, the land asked for."

Sections 3, 4, 5, and 6 prescribe the duty of the governor on receipt of such petitions; that he should submit same to the territorial deputation, by whom the grants to families or private persons should be approved before becoming definitely valid. In case the territorial deputation should withhold their approbation in any such case, it was made the duty of the governor to submit such disapproved grant to the supreme government for its action.

"Sec. 7. The grants made to empressarios for them to colonize with many families shall not be held to be definitely valid until the approval of the supreme government be obtained; to which the necessary documents must be forwarded along with the report of the territorial deputation."

The remaining sections provide further details not material to this point. No where in these regulations is there any limit prescribed as to the amount of land which might be granted to an *empressario*.

(We have here quoted from the translation of these laws made by W. E. P. Hartnell, government translator, and attached to the report made by H. W. Halleck, brevet captain and secretary of state to Colonel R. B. Mason, military governor of California, March 1, 1849.)

These laws make a clear distinction between the grants authorized to be made to individual settlers, and those authorized to be made to *empressarios*. So marked was this distinction that different modes were provided for the final confirmations of these grants. The grants to indi-

vidual settlers or colonists—"families or private persons"—were required to be submitted by the governor after he had made his concession and placed the petitioner in possession to the territorial deputation for its approval; and only in case of rejection by the deputation were these grants required to be submitted to the supreme government. All such grants as were approved by the deputation became thereby final and effective. But the grants to *empressarios* required a higher sanction, probably for the very reason that there was no limit fixed as to the amount which the governor might grant. They required the approval of the supreme government itself to their perfect ratification. In them the territorial deputation had no voice, its functions being confined to simply reporting the grant with the accompanying papers submitted by the governor to the supreme government. This distinction was recognized by the court in *Arguello vs. U. S.*, (18 How., 539.)

It is also clear, from the record, that the grant in this case was of this latter class. It was asked for, for the purposes of establishing a colony; was given by the governor upon the undertaking of the petitioners to that end; and such undertaking was carried out by them and by their successor, Charles Beaubien, up to and after the time of the change of flag.

This being so, it follows that in making this grant the governor was not restricted as to quantity; that the grant was, therefore, in all respects regular; and that at the time of the change of flag it required only the formal assent of the supreme government to vest in the grantees and their successors a perfect title, in fee, under the Mexican laws. To obtain such assent was the duty, not of the grantees, but of the governor; and we may fairly assume that the disturbances following so soon after the making of the grant, and terminating in the cession of the the territory to our Government, alone prevented such

formal assent from being given. Pending such approval by the supreme government, the grantees having a regular and authoritative grant, and having been judicially put in possession under it, clearly had a right—a title but little short of a perfect fee, as it was clearly good against all the world, except only the Government. And the Government could resume it only by a specific act for that purpose.

But admitting, for the sake of argument, that we are not correct in this; that the authority of the governor was limited in making a grant to an *empresario* to the same extent as in making a grant to an individual for his own use; or that the grant in this case cannot be considered as a grant to an *empresario*, and the result is not materially changed. Lee and Beaubien had a grant made by the proper authority, and had been by that same authority formally placed in possession under it. They had no further duty to perform. It was then the duty of the governor to submit the grant, in the first instance, to the territorial deputation for its approval. If the deputation declined to approve it, for any cause, it was then his duty to submit the matter to the supreme government. That was the sovereign power, having absolute authority over the territory to dispose of same in any manner or to any extent it saw fit, and from which the governor derived his power. Who will say that this supreme government might not have approved the act of the governor, or that such approval would not have cured any defect in the original grant, and have vested in the grantees a perfect and absolute title? Having absolute power over the subject-matter, the supreme government might have granted to any extent without the intervention of the governor; and clearly its subsequent approval and ratification of his act, although it may originally have been in excess of his authority, would have cured that defect, and validated the entire transaction. And this was not a bare arbitrary power in the hands of the supreme government, which it

might, or might not, be called upon to exercise. So far as this case was concerned, the question must of necessity have been brought before it. It could not avoid considering it, for the grant was made and must necessarily be considered by the supreme government, unless, indeed, it had been made final by the approval of the intermediate territorial deputation, and its consideration by the supreme government have thus been made unnecessary. When it came to be so considered, it is no violent presumption to say that the same motives which induced the governor to make the grant would have induced the supreme government to approve and confirm it.

Pending the examination of the grant by the supreme government the grantees were in possession under color of title—a possession given to them formally by the Government, and under a title sufficient in form and recognized as valid by the usages and customs of the country. They occupied no anomalous position; it was a situation in which every holder of a grant found himself during the interim between receiving his grant from the governor, and the time when it should be acted upon by the territorial deputation or the supreme government. It was a situation created by the law and by the mode of precedure; and while it continued, the grant of the governor and the possession under it were recognized of necessity as a good and sufficient title. It was a title, good and sufficient under the usages and customs of that country, however defective it may appear in the light of our more certain law, and however difficult we may find it to exactly determine or express its qualities. It was at least a *right* recognized as valid, and which could only be disturbed or questioned by the Government itself.

U. S. *vs.* Reading, 18 How., p. 1.
U. S. *vs.* Cervantes, 18 How., p. 553.
U. S. *vs.* Pacheco, 22 How., p. 225.
U. S. *vs.* Johnson, 1 Wall., p. 326.

To what did this right or title attach? The answer would seem to be plain. To all the land of which the grantees had been put in possession by the Government under the grant. The plaintiff in error insists that it attached to only twenty-two square leagues of the land of which the grantees were put in possession. But which particular twenty-two leagues? It is admitted that the boundaries fixed by the judicial possession embraced a much larger area than twenty-two leagues; and that the grantees and their successor, Charles Beaubien, were in the actual possession of all the land within those boundaries. That possession applied to the whole and to every part, and it is impossible to say that under such possession they had a right to any one part and not to any other.

Upon this point we conclude, therefore, that, in any view of the case, the grant in question was not a void grant. It was at most simply voidable, and could only have been avoided by the specific act of the Government. Until the supreme government had acted upon the grant, and either confirmed, modified or rejected it, the grantees and their successor, Charles Beaubien, had a right or title which, however inferior it may have been to a fee simple under the English law, was recognized as good, valid and sufficient under the usages and customs of the country, and that such right or title extended to each and every part and parcel of the land included within the established boundaries.

II.

As to the Power and Obligation of Congress to Protect and Confirm this Grant.

It is well established that by the cession of this territory to the United States, Congress having under the Constitution the sovereign power to dispose of the public domain, succeeded to all the powers that were vested in the supreme

government of Mexico before the cession, superadded to which was the obligation imposed by the law of nations and the Treaty of Guadaloupe Hidalgo to protect the citizens of the ceded territory in their property rights of all kinds. It will not be denied that after the cession Congress had full power to grant portions of the territory in such manner and upon such consideration as it deemed best; and it became its duty to take such action as was necessary for the protection of citizens of the territory in their rights of property to as full extent as might, or could, have been done by the supreme government of Mexico. And it was not necessary that the right of the citizen should be a perfect legal right to entitle him to the protection of our government. He was equally entitled to protection in any equitable or inchoate right. Any *claim*, even which might have been ripened into a perfect right by the action of the supreme government of Mexico, was entitled to a like consideration at the hands of Congress.

Souland *vs.* U. S., 4 Peters, 511.
Delassus *vs.* U. S., 9 Peters, 117.
Fremont *vs.* U. S., 17 How., 542.
U. S. *vs.* Pacheco, 22 How., 225.

In carrying out the obligations imposed upon us by the acquisition of this territory, in the matter of land claims, Congress adopted widely different methods for different portions of the acquired territory. In California it provided a commission of inquiry and a judicial investigation, under certain rules and regulations applicable to all cases. These tribunals, in considering the cases brought before them, were bound by these fixed rules and regulations, and had no power to exercise discretion beyond them. Even they recognized and ripened into perfect titles claims which at the time of the acquisition of the country were inchoate, vague, and indefinite, and might never have

been confined by the Supreme Government of Mexico. As to the remainder of the acquired territory, Congress has provided no such tribunals, reserving to itself the right of finally confirming, modifying, or rejecting such claims as might be presented through its officer, the Surveyor General, who was empowered and required to ascertain the origin, nature, and extent of the claims under the Mexican laws, usages, and customs, and to report same to Congress with his recommendation. In passing upon these claims finally, Congress is not bound by the strict rules and regulations which governed the tribunals to which the claims in California were submitted. Congress has sole and sovereign power over the subject-matter, and may, by its confirmation, render valid, claims which the courts in California would have had no authority to entertain. It might, as we shall hereafter show, by its legislative confirmation, equivalent to a new grant, make valid and perfect, a title absolutely invalid and of no effect under the Mexican law.

We have already shown, that in this case the grant was an *empressario* grant, in making which the governor was not restricted as to quantity, and it is conceded that in other respects the grant was regular. If this be so, then not only had Congress the *power* to confirm it to its fullest extent, but it was its *duty* to do so, in fulfillment of its treaty obligations, and under the law of nation. But even if this were not so, if it can be held that in making the grant, the governor exceeded his authority. Still we have shown that by his grant, and by putting the grantees in possession, they acquired a *right*, good and sufficient under the usages and customs of the country, and in which they could not be disturbed, except by the government. In this right they were entitled to protection by our government, the only difference being that in such case Congress would have had the right, had it seen fit to exercise it, to modify the grant in its confirmation, or rather to restrict

or curtail the title. We shall show that Congress did not see fit for any reason to so restrict its confirmation.

III.

As to the Effect and Extent of the Confirmation made by Congress.

The confirmation of this grant, made by the act Congress of June 21, 1860, is absolute and unconditional in its terms. It is entitled "An act to confirm certain private land claims in the Territory of New Mexico." It enacts "That the private land claims in the Territory of New Mexico, as recommended for confirmation by the Surveyor General of that Territory, * * * * * * designated as numbers one, three, four, six, eight, nine, ten, twelve, *fourteen*, fifteen, sixteen, seventeen, and eighteen, and the claim of E. W. Eaton * * * * * * *be and they are hereby confirmed.*" Confirmed how? "As recommended for confirmation by the Surveyor General." Congress had before it the report of that officer, embracing all the known facts in reference to the grant. In this report it had the petition of Charles Beaubien to the Surveyor General, making no concealment, no misstatements as to quantity, but avowing that he could not "show the quantity of land claimed by him, only so far as set forth by the foregoing description of points and bounds, nor can he furnish a plat of the survey of the same as no survey has ever been made." With all these facts before it, Congress plainly and unequivocally confirmed the claim; and for more specific description of what was confirmed, referred specifically to the report of the Surveyor General, thus making it, with its accompanying documents, a portion of the deed of confirmation; for "when the King's grant refers in general terms to a certainty, it contains as express mention of it, as if the certainty had been expressed in the same charter." (10 Cake, 64 *a*.)

The language of this confirmation is in no way ambiguous. It is as direct and plain as it can be made. But if there be any possible doubt as to the intention of Congress in making such confirmation, or as to the care with which the case was considered, it must be set at rest by that which follows these words of absolute confirmation. In this first section of the act, Congress was dealing with *fourteen* different claims, of which this was one. As to *two* of these claims, it was thought proper to modify the general confirmation, and this was accomplished by the proviso following immediately after the words of confirmation: "*Provided*, That the claim number nine, in the name of John Scolly and others, shall not be confirmed for more than five square leagues; and that the claim number seventeen, in the name of Cornelio Vigil and Ceran St. Vrain shall not be confirmed for more than eleven square leagues to each of said claimants." This was the only exception made to the absolute confirmation of the fourteen claims, and under the familiar maxim "*expressio unius est exclusio alterius*," it conclusively demonstrates that it was not the intention to in any way limit the general and absolute confirmation as applied to the other cases. Indeed, we are not left alone to the authority of the maxim quoted.

In the case of United States *vs.* Dickson *et al.* (15 Peters, 141.), where the construction of a proviso in an act of Congress was under consideration, the court said: "We are led to the general rule of law which always prevailed, and became consecrated almost as a maxim in the interpretation of statutes, that where the enacting clause is general in its language and objects, and a proviso is afterwards introduced, that proviso is construed strictly, and *takes no case out of the enacting clause which does not fall fairly within its terms.* In short a proviso carves *special exceptions only* out of the enacting clause, and those who set up any such exception must establish it as being *within*

the words as well as within the reasons thereof." Therefore, if it should be shown that there were precisely the same reasons why Congress should have restricted or limited the confirmation of claim number *fourteen* as applied to claims number *nine* and *seventeen*, that would not suffice because the *express words* of the proviso do not contain or even allude to claim number fourteen, while they do expressly name the claims numbers nine and seventeen.

Conclusive evidence that Congress did not intend to limit the confirmation of claim number *fourteen* to anything less than the land described in the petition and recommended for confirmation by the Surveyor General is found in this: As to the claims numbers *nine* and *seventeen*, which were confirmed for only a portion of the land claimed, it was found necessary to provide a specific manner for surveying and segregating the smaller quantity confirmed from the larger quantity claimed, which was done by the second section of the act. As to the claim *fourteen*, and the other claims confirmed without limitation, no such provision was made, and none was necessary. They were confirmed for all the land claimed, and were left for the ascertainment of boundaries to the report of the Surveyor General and accompanying documents, which, at least in the case of number fourteen, were sufficiently definite for that purpose. Had Congress intended to limit the quantity confirmed in this case, it would certainly have prescribed the manner in which such lesser quantity should be located, as it did in those cases in which the confirmation was made of a part only of that which was claimed.

If it were material to show that Congress acted with due deliberation upon these cases and examined each claim carefully upon the evidence submitted, that would clearly appear from the fact that out of the fourteen cases confirmed by the first section of the act, two were confirmed for a portion only of the land claimed, and that

the manner of locating the smaller quantity confirmed in those cases was clearly prescribed. It would further appear from the fact that by the third section of the act, Congress disposed of *nineteen* cases from numbers twenty to thirty-eight inclusive, confirming eighteen but singleing out one from the number, twenty-six, which it refused to confirm but by the fifth section, provided that suit might be brought for same in the courts. It is thus evident that the character and extent of each of these claims was fully examined and understood.

By the fourth section of the act, Congress carefully provided what should be the force and effect of the confirmations made. That they should "only be construed as quit claims or relinquishments on the part of the United States, and shall not affect the adverse rights of any other person or persons whomsoever. If, therefore, there could be any doubt as to the effect of the absolute words of confirmation as creating a title in the confirmees, irrespective of any antecedent questions as between them and the government, it is clear that this quit claim or relinquishment to them of all the right and title of the United States vested in them as perfect a title as our government had to the land within the boundaries claimed, and described in their petitions. As it was happily expressed and illustrated by the learned Judge who rendered the opinion in the court below. "If A should be in possession of a certain tract of land defined by certain natural boundaries, and B being the owner thereof, should execute a release-deed to A for the premises, who would be warranted in saying that the deed conveyed less than the whole tract?"

It is obvious that this act, whether its language be given its plain and obvious meaning, or whether it be tested by the technical rules of construction, absolutely confirmed the claim number *fourteen* to Charles Beaubien in accordance with the report of the Surveyor General

which with its accompanying documents was by reference made a part of the act of confirmation. Those seeking to give to the confirmation a more restricted operation, must seek for reasons and grounds therefor outside of the act itself.

In the court below it was urged that the authority of the Mexican Governor in making the grant was limited to granting eleven square leagues to each grantee; that the grant in so far as it was in excess of that amount, or of twenty-two square leagues to the two petitioners, Lee and Beaubien, was void; that as to such excess they had no legal right; that the report of the Surveyor General to the effect that in his opinion Charles Beaubien had the *legal title*, must, therefore, be construed to mean a legal title to the twenty two square leagues only, and that the confirmation by Congress, based upon the report of the Surveyor General, must likewise be construed as referring only to that to which Beaubien had a legal right.

To most of this we have already replied by showing:

1st. That the grant in this case was an "*empresario grant*," in making which the governor's power to grant was not limited.

Arguillo *vs.* U. S., 18 How., 539.
Petition of Lee & Beaubien, Record, folio 15.
Petition of Charles Beaubien, Record, folio 26.

2d. That it was not necessary for Charles Beaubien to show in himself an absolute legal right to entitle him to protection therein under the law of nations and treaty of Guadalupe Hidalgo, but that our Government was in good faith bound to protect him in any inchoate or equitable right which he may have possessed.

Soulard *vs.* U. S., 4 Peters, 511.
Delassus *vs.* U. S., 9 Peters, 117.
Fremont *vs.* U. S., 17 How., 542.
U. S. *vs.* Pacheco, 22 How., 225.

3d. That even if we are not correct in our first point above stated, if the governor was limited in his authority in making this grant, still that it having been made in due form, and Lee and Beaubien having been formally put in possession under it by the proper officer of the Government, they and their successor, Charles Beaubien, thereby obtained a right to all the land of which they were put in possession, recognized as good and sufficient under the laws, usages, and customs of the country, in which right they could not be disturbed except by the act of the Government, and which was sufficient to demand recognition by our Government.

U. S. *vs.* Fremont, 17 How., 542.
U. S. *vs.* Reading, 18 How., 1.
U. S. *vs.* Cervantes, 18 How., 553.
U. S. *vs.* Pacheco, 22 How., 225.
U. S. *vs.* Johnson, 1 Wall., 326.

There is nothing in the report of the Surveyor General, nor in the accompanying documents, to show any intention on his part of confining his recommendation in any degree. On the other hand, his language is plain and unambiguous. He states: "It is the opinion of this office that the grant is a good and valid one, and that the legal title vests in Charles Beaubien." To what? To twenty-two leagues? No. "*To the land embraced within the limits contained in the petition.*" And he, therefore, recommends that same be confirmed to him by Congress. It may be that technically the Surveyor General erred in finding that Charles Beaubien had what we understand by a "legal title" to any part of this land. But he clearly had *some* right, and it as clearly extended to all the land within his possession as much as to any part thereof. It was a right which Congress, on full deliberation, felt bound to recognize; and with all the facts before it, it freely confirmed him in that right, and quit-claimed and

released to him all the title of the United States to the land described in his petition.

This confirmation was not simply a recognition of a pre-existing right. It was equivalent to a grant *de nova*, and absolutely cured whatever defect or infirmity existed in the title prior to such confirmation. It vested in the confirmee or grantee the highest form of title known to our law.

Strother *vs.* Lucas, 12 Peters, 411.
Field *vs.* Seabury, 19 How., 323.
Stoddard *vs.* Chambers, 2 How., 284.
Grignon *vs.* Astor, Ibid., 344.

It was also urged in the court below, upon the hypothesis that the grant was void as to the excess over twenty-two square leagues, that the confirmation made by the act could have no operation or effect upon a void thing, and, consequently, that the legal effect of the confirmation was to confirm the title to the extent of twenty-two leagues only.

We have already shown that this hypothesis is untenable; that the grant was not void, but at the most was simply voidable.

Even if the grant was absolutely void, still the position would not be well taken. It overlooks the distinction to be made between the acts of a sovereign power and those of an individual. A legislative act, unlike the deed of a private person, may, by the simple terms of confirmation, confirm and make volid a void conveyance. The case of *Wilkinson vs. Leland* (2 Peters., 627) is directly in point. In that case the court said: "For the purpose of giving construction to the words of the act, we have been referred to the doctrine of confirmation at the common law in deeds between private persons. It is said that the act uses the appropriate words of confirmation—ratify and confirm—and that a confirmation at common law will not

make valid a void estate or act, but only one which is voidable. It is, in our judgment, wholly unnecessary to enter upon any examination of this doctrine of the common law, some of which is of great nicety and strictness, because the present is not an act between private persons having interests and rights to be operated upon by the terms of their deed. This is a *legislative act*, and is to be interpreted according to the intention of the Legislature apparent on its face. Every technical rule of construction or force of particular terms must yield to the clear expression of the paramount will of the Legislature. It cannot be doubted that an act of parliament may, by terms of confirmation, make valid a void thing, if such is its intent. The cases cited in Plowden, 399, in Comyn's Digest, Confirmation D, and in 1 Roll. Abridg., 583, are directly in point. The only question then is, what is the intention of the Legislature in the act of 1792? Is it merely to confirm a void act, so as to leave it void; that is, to confirm it in its infirmity, or is it to give general validity and efficiency to the thing done? We think there is no reasonable doubt of its real object and intent."

But in this case we are not left to the simple words of confirmation contained in the act. In addition to them, Congress was careful to more fully express its intention and purpose, and prescribed definitely what should be the effect of the words confirmation used. That they should operate as a "quit-claim and relinquishment" of all the title of the United States to the confirmee.

If this grant was void, in whole or in part, then, by the cession, the United States succeeded to the title to that part of the land in question, to which the grant did not apply; and as to its disposal, Congress had the sovereign power to grant or to withhold. It might concede with or without limitations, and it has chosen to confirm, without limitation, quit-claiming and releasing all the title of the United States to the land recommended for con-

firmation by the Surveyor General. In such case, the confirmation would have the force and effect of a grant *de novo*, vesting in the grantee as perfect a title as if his grant from the Mexican government had been in all respects perfect and valid.

It was also contended that Congress did not intend to confirm more than twenty-two square leagues to this claim, because of some passages contained in the report of the Senate Committee upon this and other claims mentioned in the act.

The intention of Congress must be deduced from the language of the act. The report of a committee of one House of Congress is no expression of the will of both Houses and of the Executive. Supposing, for illustration, that the Senate Committee had reported adversely upon the entire bill, recommending that it should not pass; and that over such report the bill *had* passed and been approved. Could it be maintained on the strength of such report that Congress did not *intend* to pass the bill, and therefore that the law was void? If any authority might be thought necessary upon this point, it would be fully met by the case of *Aldridge vs. Williams* (3 How., p. 1), cited by the learned judge who rendered the opinion in the court below.

As the brief of counsel in the lower court was so full and exhaustive, we attach it hereto as part of this brief, so as to more perfectly aid the court in a just solution of this appeal.

M. H. CARPENTER,
A. T. BRITTON,
Counsel for Appellee.

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M. H. CARPENTER,
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Counsel for Appellee.

APPENDIX.

Decree of the 18th August, 1824, Respecting Colonization.

The sovereign general constituent congress of the United Mexican States has been pleased to decree—

1st. The Mexican nation promises to those foreigners who may come to establish themselves its territory, security in their persons and property, provided they subject themselves to the laws of the country.

2d. The objects of this law are those national lands which are neither private property nor belong to any corporation or pueblo, and can therefore be colonized.

3d. To this end the congress of the States will form, as soon as possible, the laws and regulations of colonization of their respective demarkation, with entire conformity to the constitutive act, the general constitution, and the rules established in this law.

4th. Those territories comprised within twenty leagues of the boundaries of any foreign nation, or within ten leagues of the sea coast, cannot be colonized without the previous approval of the supreme general executive power.

5th. If, for the defence or security of the nation, the Federal Government should find it expedient to make use of any portion of these lands for the purpose of constructing warehouses, arsenals, or other public edifices, it may do so with the approbation of the general Congress, or, during its recess, with that of the government council.

6th. Before the expiration of four years after the publication of this law, no tax or duty (direcho) shall be imposed on the entry of the persons of foreigners, who come to establish themselves for the first time in the nation.

7th. Previous to the year 1840, the general Congress

cannot prohibit the entry of foreigners to colonize, except compelled to do so, with respect to the individuals of some nation, by powerful reasons.

8th. The Government, without prejudicing the object of this law, will take the precautionary measures which it may consider necessary for the security of the federation, with respect to the foreigners who may come to colonize.

9th. In the distribution of lands, Mexican citizens are to be attended to in preference; and no distinction shall be made amongst these, except such only as is due to private merit and services rendered to the country, or inequality of circumstances, residence in the place to which the lands distributed belong.

10th. Military persons who are entitled to lands by the promise made on the 27th of March, 1821, shall be attended to in the States, on producing the diplomas granted to them to that effect by the supreme executive power.

11th. If by the decrees of capitulation, according to the probabilities of life, the supreme executive should see fit to aleniate any portion of land in favor of any military or civil officers of the federation, it may so dispose of the vacant lands of the territories.

12th. No one person shall be allowed to obtain the ownership of more than one league square, of five thousand varas (5,000*v.*) of irrigable land, (de regadio,) four superficial ones of land dependent on the seasons, (de temporal,) and six superficial ones for the purpose of rearing cattle (de abreradiso.)

13th. The new colonists cannot transfer their posessions in mortmain, (manos muertas.)

14th. This law guarantees the contracts which the grantees (empressarios) may make with the families which they may bring out at their expense; provided they be not contrary to the laws.

15th. No one who, by virtue of this law, shall acquire

the ownership of lands, shall retain them if he shall reside out of the territory of the republic.

16th. The government, in conformity with the principles established in this law, will proceed to the colonization of the territories of the republic.

General Rules and Regulations for the Colonization of Territories of the Republic.—Mexico, November 21, 1828.

It being stipulated in the 11th article of the general law of colonization of the 17th of August, 1824, that the government, in conformity with the principles established in said law, shall proceed to the colonization of the territories of the republic; and it being very desirable, in order to give to said article the most punctual and exact fulfillment, to dictate some general rules for facilitating its execution, in such cases as may occur, his excellency has seen fit to determine on the following articles:

1st. The governors (gefes politicos) of the territories are authorized (in compliance with the law of the general Congress of the 18th of August, 1824, and under the conditions hereafter specified,) to grant vacant lands in their respective territories to such contractors (empressarios) families, or private persons, whether Mexican or foreigners, who may ask for them, for the purpose of cultivating and inhabiting them.

2d. Every person soliciting lands, whether he be an *empressario*, head of family, or private person, shall address to the governor of the respective territory a petition, expressing his name, country, profession, the number, description, religion, and other circumstances of the families or persons with whom he wishes to colonize, describing, as distinctly as possible, by means of a map, the land asked for.

3d. The governor shall proceed immediately to obtain

the necessary information whether the petition embraces the requisite conditions required by said law of the 18th of August, both as regards the land and the candidate, in order that the petitioner may at once be attended to; or if it be preferred, the respective municipal authority may be consulted whether there be any objection to making the grant or not.

4th. This being done, the governor will accede or not to such petition, in exact conformity to the laws on the subject, and especially to the before-mentioned one of the 18th of August, 1824.

5th. The grants made to families or private persons shall not be held to be definitely valid without the previous consent of the territorial deputation, to which end the respective documents (espediontes) shall be forwarded to it.

6th. When the governor shall not obtain the approbation of the territorial deputation he shall report to the supreme government, forwarding the necessary documents for its decision.

7th. The grants made to *empressarios* for them to colonize with many families shall not be held to be definitely valid until the approval of the supreme government be obtained; to which the necessary documents must be forwarded, along with the report of the territorial deputation.

8th. The definitive grant asked for being made, a document signed by the governor shall be given to serve as a titile to the party interested, wherein it must be stated that said grant is made in exact conformity with the provisions of the laws in virtue whereof possession shall be given.

9th. The necessary record shall be kept in a book destined for the purpose of all the petitions presented, and grants made, with the maps of the lands granted, and the circumstantial report shall be forwarded quarterly to the supreme government.

10th. No *capitulization* shall be admitted for a new town,

except the *capitulizator* bind himself to present as colonists twelve families at least.

11th. The governor shall designate to the new colonists a proportionate time within which he shall be bound to cultivate or occupy the land on the terms and with the number of persons or families which he may have capitulized for, it being understood that if he does not comply the grant of the land shall remain void; nevertheless, the governor may revalidate it in proportion to the part which the party may have fulfilled.

12th. Every new colonist, after having cultivated or occupied the land agreeable to his *capitulization*, will take care to prove the same before the municipal authority, in order that, the necessary record being made, he may consolidate and secure his right of ownership, so that he may dispose freely thereof.

13th. The reunion of many families into one town shall follow, in its formation, interior government and policy, the rules established by the existing laws for the other towns of the republic, special care being taken that the new ones are built with all possible regularity.

14th. The *minimum* of irrigable land to be given to one person for colonization shall be 200 varas square; the *minimum* of land, called *de temporal*, shall be 800 varas square, and the *minimum* for breeding cattle (*de obsevadeso*) shall be 1,200 varas square.

15th. The land given for a house lot shall be 100 varas.

46th. The spaces which may remain between the colonized lands may be distributed among the adjoining proprietors, who shall have cultivated theirs with the most application, and have not received the whole extent of land allowed by the law, or to the children of said proprietors, who may ask for them to combine the possessions of their families; but on this subject particular attention must be paid to the morality and industry of the parties.

17th. In those territories where there are missions, the

lands occupied by them cannot be colonized at present, nor until it be determined whether they are to be considered as the property of the establishments of the neophytes, catechumens, and Mexican colonists.

TERRITORY OF COLORADO,

IN THE SUPREME COURT,

Of the February Term, A. D. 1874.

JOHN G. TAMELING,
Appellant,
vs.
UNITED STATES FREEHOLD LAND AND EMIGRATION COMPANY,
Appellee.

ARGUMENT OF COUNSEL FOR APPELLEE.

This is an appeal from a judgment against the appellant, given in an action of ejectment, tried in the District Court of Pueblo County, before Hon. Moses Hallett, Chief Justice, upon an agreed statement of facts, which is fully set out in the record. The only question in the case, upon which the judgment of this Court is sought, is whether a statute of the Congress of the United States confirmed the title to a Mexican land grant, now lying within this Territory, to a greater extent than twenty-two square leagues.

The errors assigned are substantially alike, and are in the words following:

"*First.* The District Court erred in rendering judgment for the plaintiff on the agreed statement of facts filed in this, that under the colonization act of Mexico, in force at the time that the Sangre de Christo Grant was created, no grant could legally be made in excess of twenty-two leagues to the grantees, it being conceded by the agreed statement of facts that the Costillo estate alone, which is part and parcel of said Sangre de Christo Grant, contains by estimate five hundred thousand acres of land, or there-

abouts, which is five times as much land as could be legally granted to two parties.

"*Second.* Because the District Court erred in construing the act of confirmation by Congress to ratify the original grant to a greater extent than that for which under the colonization act of Mexico, of A. D. 1824, it could have been originally created."

The land in controversy in this suit forms a small portion of the Costilla estate, so-called, which estate the appellee claims to own in fee. The Costilla estate is a portion of a yet larger tract of land commonly called the Sangre de Christo Grant, which said grant is described by metes and and bounds in the record at folio 61–2. The title of the appellee and plaintiff is derived by a chain of conveyance from Charles Beaubien, in whom, as the appellee alleges the title to the whole Sangre de Christo Grant as described in the record, was vested by an act of Congress of the date of June 21, 1860, and entitled "An act to confirm certain private land claims in the Territory of New Mexico." The grant is designated in said act of Congress as claim No. 14, and to avoid confusion it may be well to remember the terms "Sangre de Christo Grant" and "claim No. 14" are used to designate the same tract of land.

The claim of the appellant to the particular land in controversy, rests upon the proposition that the act of Congress above cited did not confirm claim No. 14 to the extent of all the land embraced within the exterior lines or boundaries thereof as they are set forth in the petition of the claimant for confirmation of said claim by Congress, (folio 61–2,) but only to the extent of twenty-two leagues, which, it is conceded, is a quantity of land much less than the area embraced within the exterior lines of claim No. 14, as those lines are drawn by the appellee, and described in the petition of the said claimant, Charles Beaubien. The only question then is the amount and location of the

land embraced within claim No. 14. That claim No. 14 to the extent of twenty-two leagues is confirmed by the act of Congress of June 21, 1860, is not questioned.

Since the appellant does not dispute that by the act of Congress Charles Beaubien acquired a title to twenty-two leagues of the Sangre de Christo grant, and that by purchase and conveyance the appellee acquired a title to a portion of the grant, it may be remarked in passing that the appellant nowhere locates the portion of the grant, admitted by him to be confirmed; nor does any act of Congress, or other authority, point out the mode and manner of its location, so that it may be distinguished from the additional and other lands within the boundaries of the original claim. In other words, if the exterior lines or boundaries of claim No. 14 as confirmed, are not as located by the appellee, there is no method yet provided by which they may be contracted so as to only surround and define the twenty-two leagues of land confessed by the appellant to have been confirmed by said act of Congress. If such be the case, the public domain within certain limits cannot be distinguished from the private land claim. No settler, whether claiming under the pre-emption or homestead laws of the United States, or under a conveyance from Beaubien, to whom the grant was confirmed, could be safe in his supposed right of ownership to a particular parcel of the land. From this an argument *ab inconvenienti* can be drawn.

If the position of the appellant be correct the act of June 21, 1860, in so far as it relates to claim No. 14, is of no effect, except to declare that the grantee and his assigns have a right to twenty-two square leagues of land, without giving that quantity of land a particular place within the exterior lines of the much larger body which the grantee claimed. That this could not have been the intention of Congress is apparent, not only from the language of the act itself but also from the fact that the same act

confirmed claims Nos. 5 and 17 to only a limited extent each, but does provide the mode and manner in which the amount of land so confirmed shall be definitely located, and set apart from the balance of the land claimed but not confirmed to the respective claimants thereof.

But before further considering the questions involved, a brief history of the proceedings relating to the title of claim No. 14 may serve to render the discussion more intelligible.

The entire locality embraced within the limits of claim No. 14, (whatever the extent of the claim may be), is in that portion of the country formerly belonging to the Republic of Mexico, and within what was then known as the Department of New Mexico. By the treaty of Guadalupe Hidalgo, February 2, 1848, we acquired this locality, and by the same treaty guaranteed existing rights of property in the soil then and thereby transferred from Mexican to American dominion.

In December, 1843, prior to the acquisition of New Mexico, by the United States, Louis Lee and Narcisso Beaubien, petitioned Don Manuel Armijo, then the civil and military governor of that province, to grant them land within certain boundaries. This petition, after the usual preliminary steps, was definitely acted upon, the land-marks and boundaries established, and the petitioners put in possession of the land for which they asked. (Folios 39 to 43.)

Subsequently, the interest of the grantees, by descent and purchase, became vested in Charles Beaubien, and remained in him until after the act of confirmation of June 21, 1860. The grant as claimed by Beaubien, is described by metes and bounds, in his petition to the Surveyor General, at folios 61 *et seq.* of the Record.

By the treaty of Guadalupe Hidalgo, Article VIII, the rights of property in Mexicans, established in what before then was Mexican territory, was guaranteed, leaving such

persons free to remain or to remove; and free to retain or dispose of their property. In July, 1854, the United States appointed a Surveyor General for New Mexico. It was made his duty to inquire into the origin, nature, and extent of land claims in New Mexico, under the laws, usages, and customs of Spain and Mexico, and report upon all such as originated before the cession of the Territory to the United States, with his decision as to their validity.

U. S. Statutes at Large, vol. 10, p. 308 *et seq.*

In pursuance of this law, William Pelham, Surveyor General of New Mexico, on December 3, 1856, investigated the claim of Charles Beaubien, to what is called the Sangre de Christo grant, and approved of the same, as claimed by him. The entire proceedings upon the investigation were by the Surveyor General properly reported, and by the Department of the Interior transmitted to each House of Congress on February 11, 1857. (Folio 26.) Thus the entire case was laid before Congress for its final action.

On June 21, 1860, Congress passed the act of confirmation which has before been briefly noticed.

It is agreed that the claim of Charles Beaubien is designated in that act as claim No. 14, and also that his claim was to the tract of land known as the Sangre de Christo grant. (Folio 94.) At folios 22–3 of the Record, and at folio 61 *et seq.*, of the Record, it is described by its boundaries as follows, viz., "Beginning at a point one Spanish leagne below the confluence of the Rio de Costillo and the Rio Del Norte, thence up the Rio Del Norte on the eastern bank thereof, to a point one leagne above the mouth of the Rio Trinchara; thence northeast to a point on the mountain; thence along said mountain, southeast, to a point established on the top of said mountain; thence south to the boundary of the lands of Miranda and Beaubien; thence along said boundary to a point about one

league south of the Rio de Costillo; and thence west to the place of beginning."

Before passing to the consideration of the Act of Congress confirming this and other grants, we will say that all of the prior proceedings relating to this claim, whether under Mexican authority and rule, or subsequent to the American conquest, were laid before Congress in the report of the Surveyor General, heretofore referred to, and given in full in the Record. (Folios 26 to 91.)

Those proceedings are presumably correct; but, in our view of the case, it is immaterial to make an inquiry, for whatever their character was, the title to the grant rests in the action taken by Congress in the passage of the act which we are now to consider.

The information given to Congress by the report of the Surveyor General of New Mexico, was as ample as Congress usually has upon any subject before it. The petition of Charles Beaubien to the Surveyor General, (which accompanied and made a part of his report,) described the land claimed by him by unmeasured boundary lines. (Folios 61 and 62.) And the petitioner expressly declared, that he could not show the quantity of land claimed by him, except by the boundaries given in his petition, or furnish a plat of the survey of the same, because the land had never been surveyed. (Folio 64.) Therefore Congress was explicitly informed of the fact that the *quantity* of land claimed by Beaubien *was unknown*, and depended entirely upon the length and course of the unmeasured boundaries set forth in the petition of the claimant. This fact would repel any charge of fraud upon Congress, were such a charge made. The report of the Surveyor General was before Congress from the date of its transmission, February 11, 1857, until the passage of the act of confirmation, June 21, 1860. It is hardly necessary to say, that by the course of proceeding in Congress, the claims reported upon by the Surveyor General must have been in

each house referred to the appropriate committee for examination and report. Upon a committee of either house making a report, the members of *both* houses were furnished with it. That is the usual course of proceeding in Congress, as will be found by reference to authoritative manuals. Hence there can be no claim of inadvertent or unadvised action by Congress, were that a pertinent subject of consideration.

We come now to consider the act of confirmation itself. The effect of that act decides this controversy. The title of the act is again given, "An act to confirm certain "private land claims in the Territory of New Mexico." The first section of the act declares: "That private land claims in the Territory of New Mexico, *as recommended for confirmation by the Surveyor General of that Territory* * * * designated as numbers one, three, four, six, eight, nine, ten, twelve, *fourteen*, fifteen, sixteen, seventeen, and eighteen * * * *be and they are hereby confirmed.*"

This section has a proviso by which claims Nos. 9 and 17 are only confirmed to a limited extent.

The second section of the act provides the mode and manner of locating the limited amount of land confirmed to the respective claimants of claims Nos. 9 and 17, thereby giving effect to the proviso above mentioned.

The third section confirms another list of claims, and from that list excepts a claim, (No. 26,) which is declared to be *not* confirmed.

The fourth section provides that the act shall be construed as a *quit claim*, or relinquishment on the part of the United States, and shall not affect the adverse right of third parties.

The remaining sections have no application to any question in this case.

Assuming for the purpose of the argument, that not a claim confirmed by the act was *per se*, valid or just, nor

had any law, usage or custom of Spain or Mexico to support it, (which is conceding more than the appellant asks, for he admits a right in Charles Beaubien, as the successor of the interests of Louis Lee and Narcisso Beaubien, to twenty-two square leagues of the land within the Sangre de Christo Grant,) and also assuming that the confirmation of claim No. 14 is absolute and unconditional in terms, and unaffected by any implied qualification, (which we understand the appellant denies,) let us enquire what is meant by the language of the 1st section: "*That private land claims * * * * * as recommended for confirmation * * * * * designated as numbers one*," *&c.*, (including claim No. 14,) "*be and they are hereby confirmed.*" "Confirmed," in the sense in which it is used in the act, means *rendered valid by formal assent*, or *ratified and made certain*. It is synonomous with the terms, strengthened, corroborated, established, fixed, verified, settled, assured. By the language of the act then, claim No. 14 "*as recommended for confirmation*" by the Surveyor General of New Mexico is made valid and fixed by the formal assent of Congress, and of the President, who signed the act. The act of the Legislative and Executive Departments concur in assuring Charles Beaubien in his rights, *as recommended* by the Surveyor General. Whatever of invalidity there might previously have been in the claim of Charles Beaubien to the Sangre de Christo Grant *as recommended* for confirmation; however infirm it might have been in character; however exorbitant it was in extent; whatever of defect there was in its origin and nature, was all cured and made legally sound and unquestionable, by the act of Congress, so far as that act could operate to make that valid which before had been invalid, or give existence to that which before had no legal being. Upon the same assumption, that Beaubien had no right to the Sangre de Christo Grant, either in whole or in part until the passage of the act of confirmation, the question is, "What is the

character of the title created by that act?" Leaving out of consideration for the present all assumed restrictions to the act of confirmation, and regarding it as unconditional and absolute, our answer is, *that it is the highest title known to the law.*

It is an established fact that a grant or cession of land by Congress is not an act of agency or the exercise of a ministerial power, but is the exercise of an act of sovereignty over the public domain authorized by the Constitution.

Constitution of the U. S., Art. IV, Sec. 3.

It has the highest sanction of the Government, as appears by the following cases cited by the appellant:

Gringon *vs.* Astor, 2 How, 344.
Territt *vs.* Taylor, 9 Cranch, 51.
Strother *vs.* Lucas, 12 Peters, 455.

It is superior to a patent, for that is issued by the Executive as an evidence that the grantee has complied with the legislative provisions made for the general disposition of the public domain. A patent is only *prima facie* evidence of title, and if not issued in compliance with law is inoperative to defeat a subsequent grant by Congress. A grant of land by Congress is a grant by the Legislative Departments of the Government, approved by the Executive, and superior to all other grants in dignity and effect.

Stoddard *vs.* Chambers, 2 How., 284.

The counsel for the appellant seeks, however, to avoid the conclusion to which the authorities lead by contending that the act of June 21, 1860, by which claim No. 14 is confirmed, is not to be construed as an absolute gift or grant of the land, but simply as a *confirmation* of the prior, but legally uncertain, rights of the claimant; *i. e.* in so far as the claimant had a right or title to the land by virtue of the law of Mexico he was confirmed in that right, but

no new or additional right was created. He concedes that the claimant had the right to twenty-two square leagues of the land claimed by virtue of the law of Mexico, and claims that that law governs this case. We may mention here that we shall not, except incidentally, perhaps, enter into a discussion of that law, for the reason that we do not think that the case requires it.

The idea of the appellant's counsel is that the act of Congress is a mere *confirmation*, governed by the same rules as a deed of confirmation between individuals, which only acts on a voidable estate, or increases a particular but certain estate, but which cannot create an estate or interest not in being or void. However correct the proposition is as applied to the act of an individual, the act of the sovereign is not so limited in its effect. The sovereign power by its act of confirmation *can* make valid a void grant, or an ineffectual conveyance. To this effect have been the uniform decisions of the Supreme Court of the United States on this point. In the case of Wilkinson *vs.* Leland (2 Peters, 627) the court says:

"For the purpose of giving construction to the words of the act we have been referred to the doctrine of confirmation at the common law in deeds between private persons. It is said that the act uses the appropriate words of confirmation, 'ratify and confirm,' and that a confirmation at common law will not make valid a void estate or act, but only one which is voidable. It is in our judgment, wholly unnecessary to enter upon any examination of this doctrine of the common law, some of which is of great nicety and strictness, because the present is not an act between private persons, having interests and rights to be operated upon by the terms of their deed. This is a *legislative act*, and is to be interpreted according to the intention of the legislature apparent on its face. Every technical rule of construction or force of particular terms must yield to the clear expression of the paramount will

of the legislature. It cannot be doubted that an act of Parliament may by terms of confirmation make valid a void thing if such is its intent. The case cited in Plowden, 399, in Comyns' Digest, Confirmation D, and in Roll. Abdg., 583, are directly in point. The only question then is what is the intent of the legislature in the act of 1792? It is merely to confirm a void act, so as to leave it void; that is, to confirm it in its infirmity, or is it to give general validity and efficiency to the thing done? We think there is no reasonable doubt of its real object and intent."

Vide also United States *vs.* Arredondo, 10 Curtis, 326; 1 McCallister's C. C. Reports, (Cal.,) p. 1, 142, 212.

But the act of June 21, 1860, is not a mere confirmation, and to establish this proposition we are not left to a construction of the words of the first section, quoted above.

By reference to the fourth section of the act we find a contemporaneous construction given to the words of confirmation used in the preceding sections, 1 and 3.

"SEC. 4. *And be it further enacted*, That the foregoing confirmations shall only be construed as quit claims, or relinquishment, on the part of the United States, and shall not affect the adverse rights of any other person or persons whomsoever."

This is a clear grant or gift by the highest authority known to the law; a grant or gift having "the highest sanction of the Government" to the claimant of the land embraced within the boundaries of claim No. 14, of all the right, title, and interest of the United States in and to the lands covered by that claim. If any persons had rights in or to any portion of the land which he derived from the original grantees, those outstanding rights are not cut off by the act; but the assertion of any right in the United States or any person (other than Charles Beaubien or his

assigns or representatives) claiming under the United States is estopped by this act.

If the appellant has any right to the piece of land claimed by him in his declaration, which falls within any class of adverse interests not affected by the quit claim and relinquishment of the United States, the record does not disclose it. As this is an agreed case, it is to be presumed that in fact no such adverse right exists and that the appellant relies simply upon his possession; at all events in this case the appellant must rely upon the assumed insufficiency of the appellee's title.

In the view in which we have been considering the case, we fail to discover the alleged insufficiency.

To yet continue our examination of the intent and purpose of the act of June 21, 1860, by reference to its language, which is a cardinal rule of construction, we pass to the arguments of the appellant's counsel, that Congress did not intend to confirm claim No. 14 to a greater extent than eleven square leagues, to each of the persons to whom the authorities of Mexico made the grant, for the reason that in the same act claim No. 17 in the name of Cornelio Vigil and Ceran St. Vrain, is only confirmed to the extent of eleven square leagues to each of those persons.

This limited confirmation of the claim of Vigil and St. Vrain is found in a *proviso*, to the first section, and is plainly an exception, to the effect of the words of general confirmation first used therein. The general and preceding words of confirmation are, "That private land claims in the Territory of New Mexico, as recommended for confirmation by the Surveyor General of that Territory * * * * * designated as numbers 1, 3, 4, 6, 8, 9, 10, 12, *14*, 15, 16, 17, and 18 * * * * * be and they are hereby confirmed."

The general words would operate as an absolute confirmation, "as recommended by the Surveyor General," of all the claims mentioned if it were not for the *proviso* to

which we allude. But the general words of confirmation are immediately followed by this language: "*Provided*, That claim No. 9, in the name of John Scolley and others, shall not be confirmed for more than five square leagues, and that claim No. 17, in the name of Cornelio Vigil and Ceran St. Vrain, shall not be confirmed for more than eleven square leagues to each of said claimants."

Now, if from this proviso an inference can be drawn that the confirmation of claim No. 14 (and others) was only to a limited and specified number of leagues, we are grateful that the appellant has conceded in argument our claim to eleven square leagues for each of the two original grantees, whose interest Charles Beaubien had acquired by descent and by purchase. The appellant might have only conceded our right to the limited quantity of five square leagues, because that was all that was granted to John Scolley and others, (how many others we don't know, but the entire number could not have been less than *three*,) with the same propriety, as to have admitted our right to the quantity of twenty-two square leagues, because that amount of land was granted to the *two* persons, Vigil and St. Vrain. It is impossible from the proviso to perceive why the amount of land confirmed to "Scolley and others" should be different from and smaller than the amount granted to Vigil and St. Vrain; and, if there be anything in the position of the appellant, it is difficult to perceive why the appellee should be entitled to more than was granted to "Scolley and others." Without the aid of technical rules for the construction of statutes, we are led to the conclusion that in claims No. 9, (John Scolley and others,) and No. 17, (Cornelius Vigil and Ceren St. Vrain,) there was something peculiar, which led Congress by the proviso to except the confirmation of those claims from the effect of the previous general words of confirmation. It evidently did not appear right to Congress to confirm

those claims "as recommended" by the Surveyor General, and hence the restriction expressed.

That the restriction expressed was only intended to apply to claims Nos. 9 and 17 is supported by the fact that the next section of the act specifies how the land granted to John Scolley (No. 9) and the amount granted to Vigil and St. Vrain (No. 17) shall be located *within* the several tracts of land by them respectively claimed. And in passing, we may ask, *how claimed* by them? By their petitions addressed to the Surveyor General of New Mexico, supported by their evidences of title, and all of which was transmitted to Congress with the recommendation that their claim be confirmed. Their claims were made in the same manner as was the claim of Charles Beaubien to the Sangre de Christo grant, (No 14,) but which latter claim Congress did not by a proviso limit or change, but confirmed "*as recommended;*" whereas in the case of claims Nos. 9 and 17 Congress did not approve of the recommendation made.

The facts apparent upon reading the act, viz., that a discrimination was made by the proviso between claims Nos. 9 and 17 as to the amount of land allotted to each; that by section two the mode is prescribed by which those amounts of land are to be located *within* and segrated from the entire body of the several tracts which the claimants of Nos. 9 and 17 sought to have confirmed to them; that section three relates to another list of claims, one of which (No. 26) is *not* confirmed either in whole or in part; that in the list of claims mentioned in section one there is an omission to mention claims Nos. 2, 5, 7, 11 and 13, which claims are not acted upon at all, and yet await the final action of Congress;—from each and all of these facts we are led to the conclusion that each claim mentioned in the act was separately considered and confirmed, (either in whole or in part,) or rejected, according to its merits; and

that no provision of the act as to one claim can extend to another or different claim.

We will now examine the act of June 21st, 1860, in a more technical manner. It is a familiar maxim of the law applicable to the construction of written instruments. "*That the express mention or inclusion of one thing implies the exclusion of another or different thing.*"

Therefore the mention in the proviso of claims Nos. 9 and 17, by implication excludes the other claims from the operation of that proviso.

What is a proviso to a statute? The office of a proviso is, by apt words, either to except something from the general terms, by restraining the effect of them, or to exclude a possible misinterpretation of them—such as the extension of the general terms to case- not within the intent or purview of the statute.

Minis *vs.* United States, 15 Peters, 423.
Wyman *vs.* Southard, 10 Wheaton, 1.

A proviso to a statute is to be strictly construed; it takes no case out of the enacting clause that does not fall within the *letter* as well as the spirit of the proviso.

U. S. *vs.* Dickson et al., 15 Peters, 141.

It follows, then, that if the reason, whatever it may be, for the restricted confirmation of claims Nos. 9 and 17 applied with equal force to claim No. 14, that fact of itself will not suffice to bring the latter claim within the proviso or exception. It can no more be put within the operation of the proviso, by construction, than claims 9 and 17 can by the same means be taken out of it. It is clear, then, that claim No. 14 was not restricted in extent, as were the claims mentioned in the proviso, but was confirmed "*as recommended*" by the Surveyor General.

The quantity of land embraced within claim No. 14 is measured by the recommendation mentioned in the first section of the act.

The recommendation is not given in the statute, and to ascertain it, reference must be had to the report of the Surveyor General, which constitutes a part of the record in this case. It will be borne in mind that the parties to this suit agree that claim No. 14, and the Sangre de Christo grant, are but two names for one tract of land (folio 25), and also that the said tract of land is bounded by certain unmeasured lines. (Folios 22, 23.) The boundaries as given afford no information as to the amount of land contained within them, further than to impress one with the idea that it is large. Attention is now called to the official investiture, or open delivery of possession of the land within those boundaries, to Louis Lee and Narcisso Beaubien. This proceeding is based upon certain preliminary proceedings, and is alleged by the officer giving the possession, to vest a perfect title under Mexican law, custom, and usage, in the entire tract of land in those persons, "their children and successors." (Folios 39, 43.)

We now pass from a consideration of the evidence of title under Mexican law, with the conviction that there is nothing in it limiting the claim of Lee and Narcisso Beaubien to any measured area, or given number of square leagues; but, on the contrary, that their claim, whatever may be its legal character under the colonization or other laws of the Mexican Republic, is to *all the land within the boundaries given* by the act of investiture.

We now come to a new era of laws and regulations relating to the land in question.

The land was transferred by the treaty of Gaudalupe Hidalgo to American rule, with the guaranty of the VIII article of that treaty, that rights of property in former Mexican citizens, within the ceded territory, and the right to transfer the same, should be respected. Congress provided for the ascertainment and confirmation of those rights of property to the soil, within the limits of New Mexico, by the appointment of a Surveyor General, whose

prescribed duty was to ascertain the origin, nature and extent of claims to land under Spanish and Mexican law and usage, and to report on all such claims as originated under those laws, which report was to be laid before Congress for *final* action; and in the meantime all lands covered by or embraced within those claims were reserved from sale or other disposal by the government.

10 U. S. Statutes at Large, 308.

It will be observed that by this statute the action of Congress upon these claims, when had, was to be *final;* thereby giving to all persons the assurance that when such action was had it was irrevocable, and that any rights thereafter acquired in those claims could not be affected by future legislation. We hope to make it apparent by this argument that if the views of the appellant are sustained, there will be, as to this claim, *judicial legislation,* as subversive of valuable rights acquired since the passage of the act of confirmation, and upon the faith placed in it, as though the National Legislature, had it the power, were to repeal the act and declare claim No. 14 *not* confirmed.

In 1857 the report of the Surveyor General upon claim No. 14 was transmitted to Congress. (Folio 26.) It is very full and complete, giving all the proceedings and evidence pertaining to the origin, nature and extent of the claim.

The petition of the claimant, Charles Beaubien, is embraced in the report, and among other things contains the statement "that he cannot show the quantity of land claimed by him, only so far as set forth in the foregoing description of points and bounds, nor can he furnish a plat of the survey of the same, as no survey has ever been made." (Folio 64.) The description given in the petition is the same as is agreed to be the description (folios 22, 23) of this claim. There was, then, no pretense, either

before the Surveyor General or afterwards before Congress, that the claim was measured, and contained a specified number of square leagues; or that the claimant only asked that a certain extent of land within the given boundaries should be confirmed to him. On the contrary, his claim was openly made to the whole of the described tract, whatever its superficial area might be.

The validity or invalidity of this claim, under the Mexican law, the Surveyor General was required, by the act above cited, to decide. The decision was subject to revision by Congress, to whom he reported it. And here the mode of adjudicating land claims in New Mexico differs most widely from the manner of adjudicating claims of like nature within the State of California. In the case of the California claims, Congress provided a commission of inquiry and a judicial investigation, under certain rules and regulations applicable to all the claims; whereas, in the case of the New Mexico land claims, Congress took upon itself the investigation of each claim reported upon by the Surveyor General.

As Congress has the undoubted right to dispose of the public domain at will, it follows that it had the right specially, and according to its discretion, to dispose of any one of the land claims arising in New Mexico, untrammeled by any rule or obligation, except as imposed by the treaty of Guadalupe Hidalgo. In other words, its disposition of claim No. 14, reported upon by the Surveyor General, was a *sovereign and final act.*

The Surveyor General in the exercise of the powers delegated to him by Congress, reported that this grant was a positive one without subsequent conditions attached, and had been in the possession and occupancy of the grantees and their assigns from the time it was made; and in his opinion it was good and valid, and that a legal title vested in Charles Beaubien *to the land embraced within the limits contained in his petition*; wherefore, he *approved*

of the grant and recommended its confirmation by Congress. (Folio. 90.)

There can be no question, then, as to the boundaries or location of the land recommended by him to be confirmed to Charles Beaubien. It is "*the land embraced within the limits contained in the petition,*" and those limits were shown to Congress by the petition itself. The petition as we have before remarked, expressly disavows any measurement of the lines or limits of the claim, or any specific and certain knowledge of the area of land contained therein.

This report was before Congress from February 11, 1857, until the passage of the act of confirmation June 21, 1860. There was no haste in the action of Congress, and finally it confirmed claim No 14, "*as recommended*" by the Surveyor General of New Mexico, in the report which we have been considering. It seems to us that there can be no question as to the confirmation *and conveyance* to Beaubien by this act of the fee simple to all of the land claimed by him, and in the proceedings relating thereto so repeatedly and uniformly described by metes and bounds, and not by quantity. If such be the conclusion of this court the judgment of the court below must be affirmed.

The foregoing is deemed amply sufficient to maintain appellee's case, and is all that we would give, if the affirmative of the issue was upon us. The appellant, however, has advanced arguments in supports of his assignments of error, to which we have made as yet no direct reply. We will now briefly consider them.

It is claimed by the appellant that inasmuch as the colonization laws of Mexico did not allow more than twenty-two square leagues of land to be granted to two persons, therefore Charles Beaubien, as the successor to the interests of the two original grantees, could not under that law have been entitled to the whole of the land described

in his petition, its area being greatly in excess of the amount allowed to be granted by those laws. But he concedes substantially, if not expressly, that Congress had the right to dispose of the acquired territory, in larger amounts to each person than the Mexican law would have permitted, and refers to the rule of the Mexican law merely to show that, by our treaty obligations, Congress was not bound to protect any rights not valid under that law. From this general proposition which we do not care to dispute, and from the fact that in the Surveyor General's report to Congress mention is made of "a legal estate," he argues that the Surveyor General did not intend to recommend, and did not recommend, for confirmation, and therefore Congress did confirm and convey to Charles Beaubien, any greater estate than the colonization laws of the Mexican Republic, in force at the time the grant was made, would have allowed. Now, if the Surveyor General *in fact*, did recommend that Congress confirm to Beaubien *all* of the land claimed by him in his petition, (which we think is conclusively shown,) then the argument of the appellant's counsel merely shows that the Surveyor General was mistaken in his conclusions as the right of Beaubien to the whole of the land claimed by him, and that Congress unwisely confirmed Beaubien in his alleged right. In other words, it simply leads to the conclusion that the action of Congress was improvident, a matter with which we have nothing to do.

As to the proposition that the Surveyor General only recommended a confirmation to Beaubien of the *legal* estate to which he would be entitled by Mexican law, we claim that whatever the Surveyor General thought he was doing, or in fact intended to do, the words he uses in his report admit of no such qualified meaning. He recommends the confirmation of the grant to the full extent of the petitioner's claim, because it is his opinion "that the grant is a good and valid one, and that the legal

title rests in Charles Beaubien." If he assumed to pass upon the *legal title only* in arriving at his decision, and was mistaken in his conclusion that the strictly legal title of Beaubien extended to the entire amount of land claimed by him, yet his decision and its affirmance by Congress remains in no way impaired in effect by any insufficient reasoning upon which it was based. But it is quite evident from what precedes the words "*legal title*" that the term was used by the Surveyor, not in its technical sense, but in the broader one which might be expressed by the words "lawful or rightful estate under all the circumstances of the case." He was expressing his view of the justice of granting the petitioner's claim, after he had diligently inquired into it, and not drawing technical distinctions between legal, equitable, or other estates. He tells us substantially that the grants by governors of provinces, though not sanctioned positively by enactments of the Mexican Congress, yet had been long regarded valid, and that this grant by reason of the custom of the country, and the undisputed occupancy of it by the grantees and their representative, from the time it was made, should in justice be confirmed to the claimant, he having a title sufficient thereto under the jurisdiction of the former rulers of the country.

That there was a right of some kind to the whole grant vested in the original grantees by the highest authority of the Department of New Mexico is evident. However inferior this estate may have been to an English fee simple our Government was bound by treaty to respect it. All that the appellant alleges against the action of our Government amounts to no more than a complaint, that in the exercise of a sovereign power it was more liberal than the occasion called for. It is not alleged, nor does it anywhere appear, that the individual rights, real or pretended, of any person were impaired by the act of Congress. Certainly the appellant makes no showing that

his claim is prior in point of time to the confirmation of the grant. But to give judgement for him would, as it necessarily appears by the record, divest the appellee of a title purchased long after the confirmation of the grant, and presumably upon the strength of that unequivocal and solemn act by the highest authority of the land. (Folio 95.)

It is contended that Congress did not intend to confirm more than twenty-two leagues of claim No 14 (the grammatical construction and legal interpretation of the act to the contrary notwithstanding), because of what is said in the report of the Senate Committee upon this and other claims mentioned in the act of confirmation. It is perhaps needless to say that the report of a committee of *one* house of Congress is no expression of the will of *both* houses and of the Executive. That can only be found in the act of Congress itself, for it is there and only there that *Congress* gives an expression of its will. Therefore if the words of the report had been that all the claims reported upon should in their confirmation be restricted to a specific and limited area, yet the report would not override the plain and unequivocal import of the words of the act. However, the report of the Senate Committee when fully understood affords an illustration of the fact, that each claim was by the committee separately considered and passed, according to its merits, both by the committee and subsequently by Congress. The language of the report relied upon by the appellant is this: "Under the Mexican colonization laws of 1824 and the regulations of 1828, the extreme quantity allowed to be granted by the Governor to any colonist, was eleven square leagues, *and in the absence of any other guide*, your committee suggest that a restriction of the confirmation to an extent of eleven square leagues to each claimant would be the utmost they could fairly expect, and would not only be a fair but a liberal compliance with the

obligation imposed on the good faith of the United States by the treaty of Guadalupe Hidalgo."

This language will be found by examination of that report to have been used in reference to claim No. 17, which was by Congress confirmed as recommended by the committee, *i. e.*, to the extent of eleven square leagues to each claimant. That claim was only for a tract of land *in a certain locality*, as will appear by the Surveyor General's report on that claim. This the committee doubtless thought was wrong, "*and in the absence of any other guide*," except the colonization laws cited, the committee recommended the restricted confirmation of that claim. And when the claim was so confirmed, the act, (section 2,) provided for the location of the amount confirmed by the Surveyor General.

As to claim No. 14, and indeed as to all of the claims mentioned in the act of confirmation, except as Nos. 9 and 17, the committee, it is to be inferred, *had* other guides. Neither the report of the committee nor the act of confirmation cast the slightest doubt upon the propriety of the recommendation of the Surveyor General, which recommendation, as far as claim No. 14 is concerned, we have already found, by a fair construction of his report, to be *that the whole of the land within the limits of the lines given by the petitioner, Charles Beaubein, be confirmed.* And so private land claim No. 14, in the Territory of New Mexico, "as recommended for confirmation by the Surveyor General of that Territory," was confirmed by the express and unmistakable language of the act of June 21, 1860.

11 How 115–

7 How 833

8 Pet 170

14 H 574

12 Pet 410

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